NH.PUC*01/05/87*[60187]*72 NH PUC 1*Public Service Company of New Hampshire

[Go to End of 60187]

72 NH PUC 1

Re Public Service Company of New Hampshire

DR 86-295
Order No. 18,527

New Hampshire Public Utility Commission

January 5, 1987

ORDER revising the energy cost recovery mechanism of an electric utility.

---

1. EXPENSES, § 23 — Additions and betterments — Deferred cost recovery account.

[N.H.] An electric utility was permitted to recoup within a six-month period the balance of a deferred cost recovery account, accumulated in conjunction with the conversion of generating facilities from oil to coal fired units, because in recouping the balance as expeditiously as possible, ratepayers were saved the additional return requirements that would be due if the recoupment period were extended, which was more beneficial than the levelizing effect that an extended recoupment period might have on rates. p. 2.

2. AUTOMATIC ADJUSTMENT CLAUSES, § 7 — Energy cost recovery mechanism — Method of calculation — Electric utility.

[N.H.] An electric utility was authorized to change the calculation of its energy cost recovery mechanism (ECRM) from the traditional "bills rendered" standard to a "service rendered" standard, but was not permitted to add an additional component to ECRM rates (requested by the utility to account for the initial lower recovery resulting from use of the service rendered standard), because the utility failed to show that its discretionary choices supporting the change in ECRM calculation, which explicitly caused the utility to request a higher rate, were reasonable with regard to providing service. p. 3.

3. AUTOMATIC ADJUSTMENT CLAUSES, § 7 — Energy cost recovery mechanism — Payment to small power producers — Electric utility.

[N.H.] An electric utility was not permitted to recover via its energy cost recovery mechanism rates the expense of a payment made to two small power producers, allegedly for purposes of: (1) saving the utility and its customers from paying avoided cost rates (which were higher than most recently updated rates) to small power production projects; and (2) keeping at least one project from producing power for any utility purchaser until a specified time; the utility failed to show the reasonableness of the expense, because the existence of rate differential did

not mean that the payment necessarily provided cost savings to the utility or its customers, and the evidence did not support present recovery over a six-month period of distant future savings, which would benefit only future ratepayers. p. 4.

APPEARANCES: Eaton W. Tarbell, Jr., Esquire of Sulloway Hollis and Soden, and Thomas B. Getz, Esquire representing Public Service Company of New Hampshire; Michael W. Holmes, Esquire, Consumer Advocate; Martin C. Rothfelder, Esquire representing NHPUC Staff.

By the COMMISSION:

REPORT

This docket was initiated by a petition filed on November 21, 1986, by Public Service Company of New Hampshire (PSNH), a public utility providing electricity in the State of New Hampshire. The original petition requested a change in the ECRM rate from the July through December, 1986, rate of $2.202/100 KWH to a rate of $2.635/100 KWH for January through June, 1987. On December 16, 1986, PSNH revised this request from the rate of $2.635/100 KWH to $2.714/100 KWH.

Duly noticed hearings were held at the Commission's offices in Concord on December 17, 18, and 23, 1986, at which time PSNH presented eleven (11) witnesses. In addition, the Commission Staff presented one (1) witness.

The increase of the filed ECRM rate over the current ECRM rate (July through December 1986) is predominately due to: an increase of small power production in

PSNH's forecasted generation mix; a write off of the remaining balance of the Schiller Deferred Cost Recovery Account; the costs associated with an agreement between PSNH and two small power producers; an adjustment to the ECRM rate related to PSNH's change from billing tariff rates based on meter readings on or after January 1, 1987, to billings based on service rendered on or after January 1, 1987; and the recovery of a prior ECRM period overcollection of $2,749,762.

Prior to the hearings, the Commission Staff submitted twenty-seven data requests. The Company's responses to these requests were submitted and marked as exhibit twenty-five.

During the course of the hearings, several aspects of the filings were explored, some of which were:

1. Oil price estimates for the upcoming ECRM period;

2. A retail sales growth estimate of 4.2% for the first half of 1987 versus the first half of 1986;

3. The Schiller Deferred Cost and the period over which it should be recouped;

4. A Merrimack and Schiller Station coal inventory adjustment;

5. Coal prices at the Schiller Station;

6. Schiller unit availability utilizing oil vs. coal;

7. Quebec Hydro savings;

8. A "buyout" of two small power producers which have filed for rates within the jurisdiction of New Hampshire;

9. The cost of energy from small power producers and its effect on ECRM; and

10. Implementing the change in the ECRM Component.

Several of these items merit additional discussion:

I. OIL PRICE ESTIMATES AND TRENDS

PSNH's projected residual oil prices for the ECRM period ending June, 1986, show a gradual rise in price from $12.60/bbl. in January to $13.30/bbl. in March. Prices are projected to fall to $13.10/bbl. by June of 1987. In calculating its oil prices, the Company used a first-in first-out accounting method, and then estimated the monthly quantities of oil to be burned during the period. Future delivered oil costs were established by taking into account the following:

1) Current outlook for crude oil prices

2) Historical price movements

3) Current market situation for residualed oil

4) Data Resources, Inc. — Monthly Energy Outlook: October, 1986

5) U.S. Department of Energy — Short Term Energy Outlook: Quarterly Projections; October 1986

6) A telephone survey of utility fuel buyers and suppliers

The company combined all the above information in making a monthly estimated cost of oil to be burned. The most recent Department of Energy Short-Term Energy Outlook was used as the predominant guide for PSNH oil cost estimate. This is consistent with past ECRM forecasts of oil prices approved by the Commission. Therefore, the filed oil cost estimates will be approved.

II. The Schiller Deferred Cost Recovery Account

[1] In its filing PSNH proposes to recoup the balance of the Schiller Deferred Cost Recovery Account[1(1)] entirely within the

Page 2

upcoming six month period. This is accumulated in accordance with the Recommendations of the Parties Concerning the Schiller Coal Conversion (the agreement) approved by this Commission in DE 79-141. This agreement provided a method of recovery of the costs to convert Schiller Station 4, 5 and 6 from oil to coal fired units.

During the hearing, Staff questioned witnesses for PSNH concerning the propriety of recapturing this account balance over a six month period. PSNH believes this is appropriate because the outstanding balance accrues a return (12.94%). In recouping the balance as

expeditiously as possible, PSNH saves ratepayers the additional return requirements which would be due if the recoupment period were to be extended.

The Commission agrees with PSNH's assertion and will not increase the cost of the Deferred Cost Recovery Account by extending the period in which it will be recouped. The recoupment of the entire account balance within the upcoming ECRM period does not significantly increase the ECRM component. Therefore, it is more beneficial to the ratepayer to glean the savings from an expedited recoupment versus the "levelizing" effect extending the recoupment may have on rates.

III. Implementing the Change in the ECRM Component

[2] Under the normal operation of the PSNH ECRM component, PSNH places an ECRM component into effect for bills rendered from January 1 through June 30 and another component in effect from July 1 through December 31. Customers are charged the new ECRM rates based upon when their bill is rendered or, according to Company testimony, when a customer's meter is read. However, in this proceeding, PSNH proposes to apply its change to the January 1 to June 30 ECRM rate based on when service is rendered (rather than on when bills are rendered) after January 1, 1987. Under this "service rendered" standard, a bill based upon a January 15 date covering the December 16, 1986 — January 15, 1987 thirty (30) day period would be prorated such that half the period is computed at the old (before January 1) ECRM rate and the other half at the new ECRM rate. In contrast, under the "bills rendered" standard the entire bill would be based upon the new ECRM rate. The Company further proposes to utilize the traditional bills rendered standard at the end of the period.

According to the Company, use of this different procedure requires an additional component to be added to the ECRM rates due to lower recovery under the new proposal in the early part of the January 1 through June 30 time period. PSNH proposes that it be allowed to add this amount to its ECRM rate implemented in this time period. No other party took a specific position on this proposal.

PSNH proposes to change the calculation of ECRM at this time due to the manner in which it has developed its billing system, the timing of other rate actions by PSNH, and the inclusion of ECRM in a PSNH's basic rate rather than as a surcharge type adder. The timing of these rate actions and the design of the Company's billing system are matters totally within the Company's discretion. Maintaining ECRM as part of a basic rate rather than as an adder is also a part of the PSNH proposal. This design of ECRM is a discretionary proposal, although that proposal maintains the status quo developed through prior Commission proceedings.

The Company clearly may exercise its discretion on matters such as those described above. However, when the Company's exercise of its discretion explicitly causes it to request a higher rate from this Commission, the evidence must support the reasonableness of those discretionary actions. In other words, the evidence must indicate that the Company's actions and proposals that caused the higher rate are reasonable.

In this case, the Commission finds that the Company's evidence simply does not meet the burden of showing that those discretionary choices are reasonable with

regard to providing service. No evidence was provided for the timing of the Company's other rate actions. No evidence was provided for not proposing to segregate out the energy cost rate at this time, (as it had been prior to the implementation of ECRM), in order to avoid this problem. No cost estimate or review of the billing system problems, potential solutions and their costs were presented in this case. In fact, when the Staff began cross examining about billing system problems, the Company requested an opportunity to present additional witnesses on the cost involved in various choices for the Company's billing system. However, when the Company presented its witnesses, those same witnesses admitted that PSNH had not even attempted to develop solutions (or estimate costs thereof) to avoid having to place this additional component into the ECRM rate.

For these reasons, the Commission will authorize the change implemented in the manner the Company has proposed, i.e., using the "service rendered" standard for the January 1, 1987 change and the "bills rendered" standard for the end of period change. However, the Commission shall not include an additional component on the ECRM rates that is caused by these discretionary and unsupported choices of the Company.

IV. Payment to Pittsfield Power and Light, Inc. and Thermo Electron Corporation

In this docket PSNH takes the position that the Commission should provide recovery of a 1.25 million dollar payment to Pittsfield Power and Light, Inc. and Thermo Electron Corporation in the January 1 — June 30, 1987 ECRM period. The Staff and Consumer Advocate oppose this proposal. The Commission discusses the facts of this matter below and finds that the record in this case does not support the recovery of this payment.

1. Facts of Issue

a. The Payment

[3] Thermo Electron Corporation (TEC) and Pittsfield Power and Light (PPL) are corporations which filed petitions with the Commission requesting that the Commission grant long term rates at which PSNH would pay them for any power produced at certain proposed small power production facilities. In those petitions, TEC and PPL requested that the Commission base such rates upon rates set for PSNH purchases of power in Commission Docket No. DR 85-215. Under an agreement between PSNH, PPL and TEC, TEC and PPL withdrew their petitions for those rates at approximately the time of the receipt of the 1.25 million dollars. Under that same agreement, PPL, TEC and their principals agreed to not develop the projects of their pending dockets and sold PSNH their rights in the projects, including development rights, legal costs, and development expenditures. However, the agreement makes a special provisions for a "CAMPTON PROJECT" in that PPL and TEC must defer its commercial operation until "1998 to 1999". The developer of the "CAMPTON PROJECT" need not sell PSNH the power from this delayed project, but PSNH will purchase such power if the developer wishes to sell such power to PSNH.

b. The Projects and Their Petitions

In the spring of 1985, TEC filed its five petitions for DE 85-215 rates. TEC received and responded to data requests. Those responses establish, among other things, the maturity of the proposed projects. TEC also filed testimony on their projects.

The evidence before the Commission in this proceeding indicates that TEC was in the very early stages of developing their five projects. Major factors that contribute to maturity of a project such as local and state permits, fuel supply, equipment and construction contracts, site ownership, and financing were yet to be completed or negotiated. Moreover, Thermo testified in its

pre-filed testimony that all permitting, contracting and final financing activities were suspended pending the outcome of its hearings. The only development steps that Thermo had undertaken was generic plant design and engineering, preliminary site location and financial feasibility.

With respect to PPL, in the spring of 1986, Mr. Paul Porter filed long term rate petitions in two projects. One petition was for a revived version of the Franconia Power and Light Project (FPL). The second was for PPL. The planning for the FPL project was in such flux that Staff moved to dismiss the petition on the grounds that the developer was no longer contemplating developing the same project for which he had petitioned for a rate. The filing was subsequently withdrawn.

The pre-filed testimony on the Pittsfield project was essentially a facsimile of the prefiled testimony on the Franconia project, to the extent that the proposed water source for both projects is the Pemmigewasset River, which flows through Woodstock, not Pittsfield. The evidence in this docket indicates that the Pittsfield project was in a highly preliminary stage with respect to technical development, compliance with state and local permitting requirements and procurement of financing.

2. Commission Analysis of Issue

For analyzing the issue on the merits, the Commission notes that the hearing in this matter was held pursuant to Section 378:3-a N.H. Rev. Stat. Ann. That statute clearly defines and necessarily limits what may be included in a fuel adjustment charge. While the Commission's General Counsel indicated on the record that there may be arguments that inclusion of this payment may be outside the scope of that statute, neither the Staff nor any party to the proceeding advocated that the Commission not hear this matter due to the scope of that statute. Due to the short time frame in which this proceeding is being held, the Commission decided that it was most expeditious to go ahead and hear this matter to create a record. As the Commission has now heard the matter, it finds itself in a position to dispose of the matter on the merits of the evidence presented to it and does so below. Such a decision should not be construed as a decision on whether the fuel adjustment clause charge provided for under Section 378:3a authorizes a charge to cover such a payment or on whether the Commission will in the future consider such matters in a proceeding held under Section 378:3a. In other words, the Commission finds it most efficient to dispose of this matter on its merits based upon the evidence presented and does not address statutory or other concerns.

As the above discussed facts indicate, the 1.25 million dollar payment in this proceeding seems to have two purposes. First, the payments shall allegedly save PSNH and its customers the potential of PSNH having to pay DR 85-215 rates to the TEC or PPL projects. This is the

primary position of PSNH as to why this payment should be allowed. Second, the payment is to keep at least one project (the "CAMPTON PROJECT") from producing power for any utility purchaser until 1998 or 1999. It seems to be the position of PSNH that they received this portion of the agreement for no cost.

With regard to the first reason, it is undisputed that the DR 85-215 avoided cost rates are higher than the most recently updated rates currently under suspension in DR 86-134. The Commission further finds that the DR 85-215 avoided cost projections are higher than avoided cost projections being advocated by PSNH and most other parties in the avoided cost proceedings currently pending before this Commission. However, the existence of that differential does not particularly lead one to the conclusion that the payment necessarily provides cost savings to PSNH or its ratepayers. For such savings to exist, one must assume that there was a significant chance that one or more of those projects would have been granted DR 85-215 rates and that they would have reached commercial

operation. PSNH did not demonstrate that either of these events was likely to occur. In addition, development of the alleged savings assume the accuracy of current avoided cost estimates and that PSNH will not have to replace the capacity that any of these projects might have provided at some higher costs in the future. The evidence in this case simply does not support such a conclusion.

Even if the savings the Company alleged had some likelihood of occurring, the Commission notes that it's undisputed fact that the earliest payments to any of these projects would have occurred in 1989 and such expenses would have occurred from 1989 for approximately a 20 year period henceforth. The Commission finds that the evidence in this proceeding does not support recovering such distant future savings in a six month period in 1987, for any such savings will benefit solely future ratepayers.

With regard to the second purpose of the payment (delay or nonproduction of small power production), PSNH has not demonstrated any reason why PSNH ratepayers should pay to keep projects such as the Campton project from producing power for any potential utility purchaser. PSNH has not advanced any benefit which a PSNH customer might have from the Campton project not providing power to another New Hampshire utility.

Thus, under the above analysis, the evidence in this proceeding does not support the reasonableness of the PSNH expense of the payment to PPL and TEC. For this reason, PSNH may not recover this expense via the ECRM rates developed as a result of this proceeding.

V. Conclusion and Summary

The PSNH ECRM component of its rates for January 1 — June 30, 1987 shall not include any recovery of the component identified by PSNH as related to the method of implementing ECRM as discussed in section III above. It shall also not include any recovery of the expense of the payment to PPL and TEC. The evidence in this proceeding indicates that other expenses proposed by PSNH to adjust its ECRM rate are reasonable and allowed for recovery in ECRM. The result of this action is an ECRM rate of $0.02630 per kilowatt-hour.

PSNH's method of billing ECRM is allowed. However, as discussed in section III, the record does not indicate that PSNH could not have chosen other reasonable methods for billing ECRM had it examined its situation in advance. PSNH shall file tariffs which clearly reflect the billing methodology that the Commission has approved. Our Order will issue accordingly.

ORDER

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

ORDERED, that PSNH shall file revised tariff pages setting an ECRM rate in accordance with the foregoing report for January through June, 1987.

By Order of the Public Utilities Commission of New Hampshire this fifth day of January, 1987.

FOOTNOTES

[1]This Deferred Cost Recovery Account balance increases when the cost differential between coal and oil burned at Schiller changes such that oil has a price benefit over coal. This diminishes the energy cost savings contemplated when converting the Schiller units from oil to coal. The cost recovery foregone due to the diminished savings are deferred until such a time that the savings begin to materialize or the Schiller agreement is terminated.

==========

NH.PUC*01/07/87*[60198]*72 NH PUC 12*Charles Zuccola v. Exeter and Hampton Electric Company

[Go to End of 60198]

72 NH PUC 12

Charles Zuccola
v.
Exeter and Hampton Electric Company

DC 86-266
Order No. 18,531

New Hampshire Public Utilities Commission

January 7, 1987

ORDER entitling an electric utility to full payment for services provided to a customer alleging overpayment.

PAYMENT, § 9 — Customer liability — Good faith — Electric utility.

[N.H.] No adjustment to a customer's bill was warranted where an electric utility acted in good faith based on the terms of its approved tariff and the information available when various

actions were initiated, including the timely installation of electric services at the customer's property, replacement of a meter that was questioned by the customer, and recalculation of bills when new information was presented.

APPEARANCES: Charles Zuccola, Pro Se; Sulloway, Hollis and Soden by Margaret Nelson, Esquire on behalf of Exeter and Hampton Electric Company.

By the COMMISSION:

REPORT

I. PROCEDURAL HISTORY

On September 22, 1986, a letter was received at the Commission from Charles Zuccola of 195 Plaistow Road, Plaistow, N.H. requesting a hearing regarding alleged overcharges on electric service by Exeter and Hampton Electric Company. A hearing was scheduled for October 14, 1986, and the parties were so notified by letter of Wynn E. Arnold, the Commission's Executive Director and Secretary dated October 2, 1986. Mr. Zuccola testified on his own behalf and was assisted by his wife. Mitchell Denno, Customer Services Supervisor submitted testimony on behalf of Exeter and Hampton Electric Company.

II. NATURE OF THE COMPLAINT

Mr. Charles Zuccola has requested a hearing due to overcharging on electric service by Exeter & Hampton Electric Company. The overcharging is alleged to have occurred over a period of five years at his property on Route 125 in Plaistow, N. H. No specific amount of overcharge has been defined.

III. COMPLAINANT'S POSITION

Mr. Zuccola owns property on Route 125 in Plaistow, New Hampshire on which a house and a store are situated. In September of 1981 when the Zuccolas moved to the property, only the house was present. A residential electric meter was installed at that time. The store was built in December 1981 and January 1982. On April 6, 1982 a ceramic business was opened in the store. This business utilized electric kilns for preparing ceramic products. The residential meter served both the house and the store. In May of 1982 the company installed a demand meter, replacing the original meter. From May 1982 through August 1983 the Zuccolas paid a demand charge to the company. In August 1983 they installed separate wiring for the store and applied to the company for a second meter so that the business and residential services could be separated and the demand charge would no longer apply to residential uses. When the new meter was installed it was applied to the 100 amp service (which serves the store) while the existing demand meter was left on the 200 amp service (which serves the residence). However, Mr. Zuccola was unaware of this oversight. From August 1983 through April 1985 a demand charge was paid on the meter which serves the

residence. Mr. Zuccola claims to have contacted the company many times during this period

to complain about the billing. Although there were minimal uses of electricity in the store, the presumed billing for that meter was high. In May 1984, the company removed and replaced the existing demand meter with a new one. The prior meter was found to be in error and credit was given for overbilling.

From April 1985 to May 1986 the ceramic business was closed. The only use of the store was as an office for Mr. Zuccola's construction business. In May of 1986 the store was rented to John Cassarelli of Blue Haven Pools. In July or August the company attempted to shut off the power to the store for non-payment of the bills. However, when the meter was removed, the residential service was cut off instead of the store. This event revealed the inadvertent improper installation of the demand meter.

Mr. Denno of the company then came out to the property to review the situation. Mr. Zuccola was informed by the company that a business was being operated out of the cellar of the house due to the presence of office equipment and various ceramics materials. At this point, a demand meter was installed on the second service. Therefore both services now have demand meters. Mr. Zuccola produced original statements from several parties that the office located in the cellar of his building was not in use before May 1, 1986.

Mr. Zuccola believes that the electric company has overcharged him but does not have sufficient information available to calculate the amount. Furthermore, he believes the demand meter should not be installed on his residential service, and he should not be charged for demand.

In response to questions from Ms. Nelson, Mr. Zuccola stated that he now operates a construction company from his basement office. He also agreed that the meter bases do not have any markings to indicate which meter provides service to each of the two installations. He confirmed that the amount of the credit in 1984 was $282.

IV. COMPANY POSITION

The company's position as stated by Ms. Nelson is that it has acted in full accordance with its tariff. Mr. Denno provided testimony regarding this company position.

Mr. Denno confirmed that the original account was residential as requested on August 7, 1981. On March 25, 1982 the meter was changed to a demand meter and the rate code changed from domestic to general service based on the change in activity from predominately residential to predominately business. This change was observed by the meter reader. On August 23, 1983 Mr. Zuccola applied for a new domestic residential meter. The meter was installed on August 23, 1983 on the blank meter base.

In May 1984 Mr. Zuccola called the company to inquire about a sharp increase in the demand portion of the bill. The company changed the meter on May 21, 1984 and through testing determined that there was no problem with the clock on the original meter. However, due to the sudden jump in demand, Mr. Denno decided to rebill the 2 months in question based on the previous demand history of the account. This resulted in a credit of $282.

On May 6, 1986 Mr. Cassarelli requested service for a business account at 195 Plaistow Road and he was assigned to the business account and demand meter at that location.

Mr. Denno provided a complete record of monthly energy use for the two meters in question

and where available, a demand history.

On July 29, 1986 the meter man attempted to cut off service to Mr. Cassarelli's account due to nonpayment of bills. He confirmed that in fact the residential service was cut off when the demand meter was removed. Mr. Denno and Mrs. Gamble of the company then made a complete onsite review of the situation including the interior of the buildings. Mr. Denno observed that a business office was located in the basement of the residence, in addition to racks of unfinished ceramic products and

Page 13

two kilns which were not in use. Mr. Denno stated that typical kilns draw 6 to 8 KW but he was unable to determine the exact rating of the kilns. The company then pulled the 2 meters to determine which meter served which area. The meter assigned to Mr. Cassarelli (Blue Haven Pools) was found to be serving the residence and the meter assigned to Mr. Zuccola was found to be serving Blue Haven Pools.

Mr. Denno then had a second demand meter installed and he adjusted billings for the period beginning May 6, 1986 when Mr. Cassarelli signed for the service. These adjusted billings were submitted to the customers of record on August 28, 1986. Mr. Cassarelli was billed on a general service rate and Mr. Zuccola was billed on a residential rate. He is now under a residential rate and will continue that way in spite of the presence of the demand meter. However, the demand meter will be left in place to monitor whether the kilns go back on line and the account becomes predominately business.

Mr. Denno indicated that a demand meter is installed on all active business accounts. He also stated that they have to rely on the customer to inform them which meter base is serving which area and they cannot know what is being serviced by a meter unless told by the customer.

In summary Mr. Denno stated that the company is not obliged to refund any money to Mr. Zuccola in this matter because they have followed through on the requests by the customer for service and applied the proper rate code. The meter bases are not identified as to what they serve. The company addressed the billing complaint in 1984 in a fair manner and has been responsive to both Mr. Zuccola and Mr. Cassarelli. The company position is that they have billed fairly on these accounts from the beginning of service.

V. COMMISSION ANALYSIS

After a complete review of testimony provided by Mr. Zuccola and Exeter and Hampton Electric Company, we find that two important facts have bearing on this case. First, the lack of identification on the meter sockets has led to confusion over the areas of the subject buildings which were served by each meter. Second, the several changes in usage in both the business portion of the property and the residential portion of the property makes it difficult to make retrospective judgments on the appropriateness of the rate codes assigned to the meters.

Nevertheless, it is now clear that the original service (Account #225-6605/meter #9227) served all uses at the property from its installation in 1981 through August 23, 1983 and since that time has served the residential portion of the property only. Furthermore, beginning on August 23, 1983 up to the present, the second service (Account #225-6610/meter #7058) has

served the business portion of the property.

No facts presented have shown that the energy use data collected by either meter is in error and we must conclude that said data is correct. Furthermore, despite an unusually high demand reading in April and May of 1984, meter tests confirmed the proper operation of the demand meter on Account #225-6605/meter #9227. Due to the question raised by Mr. Zuccola these two high demand readings were adjusted downward by the company. Therefore, we must assume that the demand data recorded for this account is also correct. However, this demand data is not applicable to periods when the service is assigned a residential rate code.

Due to the erroneous application of the demand meter since August 23, 1983, no demand data is available for the business portion of the property since that time.

It is concluded that the company has acted in good faith based on the terms of its approved Tariff and the information available to it at the times when various actions were initiated. This includes timely installation of services at the property, replacement of a meter which was questioned by the customer and recalculation of bills when new information was presented. In

Page 14

the absence of adequate markings on the meter sockets, we find that the company did not have any basis for billing these accounts except as was done. Mr. Zuccola has not presented any specific request for adjustment of his bill and we find that none is warranted.

Our order will issue accordingly.

ORDER

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

ORDERED, that Exeter and Hampton Electric Company is entitled to full payment for service to Mr. Zuccola at 195 Plaistow Road, Plaistow, New Hampshire for the period ending August 11, 1986, the billing date of the corrected bill submitted by the company on August 28, 1986.

FURTHER ORDERED, that it is the responsibility of Mr. Zuccola to clearly mark each meter base to indicate the areas of the property served and to promptly notify the company of any future change in use of the property which may affect the applicability of rates covered in the company's tariff, and it is

FURTHER ORDERED, that Exeter and Hampton is allowed to maintain demand meters on both services at this property if they so choose, but may only utilize demand data in accordance with their approved tariff.

By order of the Public Utilities Commission of New Hampshire this seventh day of January, 1987.

==========

72 NH PUC 15

Re New England Hydro-Transmission Corporation

DSF 85-155
Supplemental Order No. 18,532
New Hampshire Public Utilities Commission
January 7, 1987

CLARIFICATION of condition imposed in certificate to construct and operate an electric transmission line.

CERTIFICATES, § 73 — Restrictions and conditions — Electric transmission line.

[N.H.] Permission to construct and operate an electric transmission line was conditioned on commission review and approval of a detailed plan demonstrating that the design and operation of the transmission line would meet the reliability and stability concerns of neighboring pools, and that reliability constraints would not limit the power contracted for.

By the COMMISSION:

REPORT

The Applicant has filed a Motion for Clarification and/or Rehearing of Report and Order No. 18,499 issued on December 8, 1986. (71 NH PUC 727). Intervenors and the Attorney General's Office as Public Counsel have not responded.

Order No. 18,499 contained the following condition: (71 NH PUC at 774):

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 ...

Page 15

The Motion seeks a clarification of the condition and the Commission will again review the issue to clarify for the Applicant and the participating parties the condition imposed.

The Commission is convinced that major reliability and stability problems will exist as an effect of completing the Phase II transmission line absent corrective measures. The loss of asynchronous Hydro-Quebec power treated as a single contingency could cause a loss of 3900 MW's of power in the Northeast United States. Such a loss could result in a serious regional disturbance resulting in severe damage to property, such as generator, motors and other customer appliances in addition to interruption of customer service for long periods of time.

A review of the testimony and evidence suggests that steps are being taken to minimize the problem and suggests that completion of the studies being performed will lead to a solution of the problem.

The possible solutions are the development of a dynamic isolation plan and/or establishing operating procedures governing the import levels or timing of energy deliveries to reduce load flow under certain operating conditions.

The design and implementation of the dynamic isolation plan is not complete and depends on the Hydro-Quebec System incurring considerable expense to design, implement and construct the plan. Our condition imposes an obligation for the Applicant to submit and receive approval of that plan before it operates the line.

The use of operating procedures which control the amount of energy over the line is acceptable as a temporary measure providing such procedures are approved. Such procedures should be adopted and approved by this Commission before operating the line so that we can be assured the economic benefits proposed will be achieved.

The Commission did not intend the condition to impose a requirement that 2000 MW's of power must be delivered at all times. The Commission is well aware that the contract is for 7 TWH's of power per year and that amounts delivered will depend on various factors. The Commission also is aware that the design of the 2000 MW line is capable of receiving approximately 14 TWH's of power a year and that the 7 TWH's represents 40% to 50% of the line's capacity. To the extent that the language of the condition causes some confusion, we will amend the condition accordingly.

The Commission acknowledges that the proposed transmission line has significant capacity to accommodate additional contracts for power if the reliability and stability problems are solved.

CONCLUSION

The Commission could not approve the certificate on the present record without imposing a condition that provides for the Commission to review, examine and approve the solution to the reliability and stability problems. If a plan for a dynamic isolation system is developed, that plan must be reviewed and approved. If operating procedures are to be adopted, those procedures should be reviewed and approved. The Commission has no assurance without the condition what steps will be taken or how they will be implemented; therefore, the Commission will not change the condition except as follows:

B. Prior to the 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 power contracted for ...

Our Order will issue accordingly.

SUPPLEMENTAL ORDER

Upon consideration of the foregoing Report, it is hereby

ORDERED, that the Condition in Order

No. 18,499 be amended by eliminating the words "2000 MW of" and shall read as follows:

B. Prior to the 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 power contracted for ...

By Order of the Public Utilities Commission of New Hampshire this seventh day of January, 1987.

==========

NH.PUC*01/07/87*[60218]*72 NH PUC 17*Certification to Provide Public Pay Telephone Service

[Go to End of 60218]

72 NH PUC 17

Re Certification to Provide Public Pay Telephone Service

DE 86-298
Order No. 18,534

New Hampshire Public Utilities Commission

January 7, 1987

PETITION for authority to provide customerowned, coin-operated telephone service; granted.

SERVICE, § 456 — Telephone — Customerowned, coin-operated telephones — Conditions.

[N.H.] 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 November 14, 1986, Charles Paskus, DBA New Com, filed a petition to install a coin-operated telephone at Stinson's Market, Hanover, N. H.; and

WHEREAS, the Federal Communications Commission Registration number was filed with this Commission; and

WHEREAS, in Re Coin Operated Telephone Policies, DE 84-174, DE 84-159, DE 84-152,

Order No. 17,486 (March 11, 1985) (70 NH PUC 89) 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 Charles Paskus 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 Stinson's Market 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 hearing-aid 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 toll-free calling within municipalities,

9. Mr. Paskus shall be responsible for

Page 17

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. Paskus 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 seventh day of January, 1987.

==========

NH.PUC*01/07/87*[60435]*72 NH PUC 7*Resource Electric Corporation

[Go to End of 60435]

72 NH PUC 7

Re Resource Electric Corporation

DR 86-77
Supplemental Order No. 18,528

New Hampshire Public Utilities Commission

January 7, 1987

MOTION for rehearing of petition by small power producer for long term rates; denied.

COGENERATION, § 24 — Rates — Prematurity of filing.

[N.H.] The commission refused to rehear a petition by a small power producer for long term rates, which had been rejected on the basis of the prematurity of the filing, because assurances of prospective achievements in project development were not an adequate substitute for realized progress in the finalization of the project's engineering specifications, state and local permits, financing, and fuel supply.

By the COMMISSION:

SUPPLEMENTAL ORDER

WHEREAS, 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) and Docket No. DR 85-215, Report and Order No. 17,838 (September 5, 1985), 70 NH PUC 753, 69 PUR4th 365; and

WHEREAS, by Order No. 18,495 the Commission on December 3, 1986 denied the REC petition on the basis of the prematurity of the filing; and

WHEREAS, on December 23, 1986 REC filed a Motion for Rehearing alleging:

1. that, while REC's fluidized bed combustion technology was not finalized until February 1986, the choice of the technology was made before its February 24, 1986 filing;

2. that REC had obtained approval from the Rochester Planning Board, had completed sufficient work on its Air Resources Agency permit to know that air pollution would not be a problem, and there is no evidence that the project will be unable to obtain the required state and local permits;

3. that, while REC had not obtained final commitments for debt and equity financing, its investment advisors are satisfied that financing will not be a problem if the long term rate petition is approved; and

4. that, WRI's track record in the Pacific Northwest and Texas suggests that it would have no problem providing the required amounts of tire derived fuel to the project beginning in 1988, and

WHEREAS, the Commission does not find assurances of prospective achievements in project development to be an adequate substitute for realized progress in the finalization of a project's engineering specifications, state and local permits, financing and fuel supply; and

WHEREAS, the Motion for Rehearing contains no fact or argument that had not been fully reviewed prior to the issuance of Order No. 18,495; it is therefore

ORDERED, that the Motion for Rehearing be, and hereby is, denied.

By Order of the Public Utilities Commission of New Hampshire this seventh day of January, 1987.

==========

[Go to End of 60442]

72 NH PUC 8

Re Industrial Cogenerators Corporation

DR 86-108
Order No. 18,530

Re American Cogenics

DR 86-119
Order No. 18,530

Re Enesco Merrimack Cogeneration Inc.

DR 86-121
Order No. 18,530

Re Kearsarge Power and Light

DR 86-124
Order No. 18,530

Re Plaistow Power and Light

DR 86-126
Order No. 18,530

Re A. Johnson Cogen, Inc.

DR 86-132
Order No. 18,530

Re Cygna Energy Services

DR 86-133
Order No. 18,530

New Hampshire Public Utilities Commission

January 7, 1987

PETITION by qualifying cogeneration facilities for long term rates; denied.

COGENERATION, § 1 — Project ranking — Priorities.

[N.H.] Petitions for 20-year long term rates, by seven qualifying cogeneration facilities

(QFs) fueled by fossil fuels, were denied in accordance with priorities that ranked proposed QF developments on the basis of technology; the amount of QF capacity that could reasonably be approved was likely to be exhausted before lower priority projects, including those fueled by fossil fuels, could be considered, as long as the commission remained within the constraints of the methodology presently used to calculate avoided costs for QF rates.

By the COMMISSION:

REPORT

On March 31, 1986 Industrial Cogenerators Corp. (ICC) petitioned for a 20 year long term rate for its 49.5 MW combined cycle cogeneration facility in Concord and on May 1, 1986 amended its petition to eliminate the levelization originally requested. On April 4, 1986 American Cogenics petitioned for a 20 year long term rate for its 26.4 MW topping cycle cogeneration facility in Portsmouth near the Pease Air Force Base. On April 4, 1986 Enesco Merrimack Cogeneration Inc. (Enesco) petitioned for a 20 year long term rate for its 46 MW topping cycle cogeneration facility in Merrimack and on April 9, 1986 amended the rate sheets of its filing and on April 10, 1986 amended the project description. On April 10, 1986 Kearsarge Power and Light (Kearsarge) petitioned for a 20 year long term rate for its 15 MW combined cycle cogeneration facility at Mt. Cranmore in Conway. On April 10, 1986 Plaistow Power and Light (Plaistow) petitioned for a 20 year long term rate for its 15 MW combined cycle cogeneration facility in Plaistow and Newton. On April 11, 1986 A. Johnson Cogeneration, Inc. (A. Johnson) petitioned for a 20 year long term rate for its 35 MW topping cycle cogeneration facility at the Sprague & Son Co. terminal in Newington. On April 14, 1986 Cygna Energy Services (Cygna) petitioned for a 20 year long term rate for its 12.205 MW combined cycle cogeneration facility in Ashland. All these proposed cogeneration facilities are fueled by fossil fuel: ICC and American Cogenics are based on natural gas, Enesco and A. Johnson are fueled by coal, Kearsarge and Cygna are based on oil, and Plaistow has dual oil and gas capability. All are third party cogenerators in that they intend to sell both their electrical output (to Public Service Company of New Hampshire) and their steam output. All filed for rates

pursuant to Docket No. DR 85-215, Order No.17,838, Re Small Energy Producers and Cogenerators, 70 NH PUC 753, 69 PUR4th 365 (1985).

The rates established in DR 85-215 were based on the methodology adopted following a settlement agreement between Public Service Company of New Hampshire (PSNH), the Commission Staff, and intervenors representing small power producers and cogenerators (qualified facilities or QF's) in Docket No. DE 83-62, Eighth Supplemental Order No. 17,104, Re Small Energy Producers and Cogenerators, 69 NH PUC 352, 61 PUR4th 132 (1984). The methodology, inter alia, assumed the PSNH load forecast, which in both dockets included the load represented by the UNITIL wholesale customers. It identified an hourly margin of generating units and calculated rates based on the costs of operating (and therefore avoiding operating) those units.

The methodology did not anticipate changes in the margin caused by a lower load forecast resulting from the loss of the UNITIL customers, or a change in supply resulting from the addition of significant amounts of QF capacity to the generating mix. Both these circumstances change the identification of the generating units operating on the margin and therefore the avoided cost calculation. Since generating units are dispatched in order of increasing operating cost, both circumstances tend to lower the calculation of the costs that can be avoided by additional QF generation. The loss of the UNITIL load has lowered total demand so that fewer generating units are required to provide the needed capacity and therefore the formerly marginal, most expensive units to operate, are no longer needed. Similarly, the addition of significant amounts of QF capacity means that new QFs no longer replace the operating costs of the marginal generating unit identified by the methodology. These costs have already been replaced by QFs with approved long term rate petitions and new QFs replace rather the operating costs of some less expensive unit to operate. Thus, the methodology and assumptions underlying the rates set in DE 83-62 and DR 85-215 become less reflective of the reality of load and capacity as UNITIL leaves the PSNH system and the total of approved QFs grows.

The severity of the methodological problem increased in early 1986 as the Commission received petitions for long term rate filings representing substantial amounts of proposed capacity additions:

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

January 41.60 MW
February 124.96 MW
March 166.50 MW
April 204.98 MW
May 45.82 MW

Total 583.86 MW

The Commission was cognizant that avoided cost rates were projected to decline and that developers had the incentive to file for rates pursuant to DR 85-215 rather than subsequently found lower rates. Therefore, we reviewed filings carefully to ascertain whether the filings had been made prematurely, and have denied those petitions that in our judgement had been made out of the normal sequence of project development. See DR 86-100, 101, et. seq. — Pinetree Power, DR 86-77 — Resource Electric Corporation.

The Commission has then evaluated the remaining filings in relation to a reasonable estimate of at what point (1) the costing of the margin would change, and (2) additional rate implications need to be taken into consideration, and in relation to the number of megawatts of QF capacity already approved. The first consideration relates to the fact that marginal cost will not change with very small changes in capacity or load because the marginal unit itself will be eliminated from the margin only after none of its capacity and energy is any longer required. Only after the marginal unit has been taken off line will a less expensive unit become the new marginal unit and establish a new marginal cost. It has been the Commission's judgement that marginal cost does not change significantly

between the margin defined by the methodology and the addition of 200 MW of QF capacity.

Beyond 200 MW, however, the marginal units will begin to change and the marginal cost decline.

The second consideration in the number of megawatts of QF capacity that can be approved at the rates defined by the DE 83-62 and DR 85-215 methodology involves the revenue requirement and retail rate implications. Under the terms and conditions of DE 83-62, project developers can file for levelized long term rates. The full cost of their rates, both energy and capacity, are passed through the Energy Cost Recovery Mechanism to the ratepayers. Assuming correct estimates of avoided cost, in the long run, over the period of the rate petition, ratepayers are indifferent to the source of the power generation, QF or utility. In the near term, however, ratepayers pay more than avoided cost for QF generation. While they will be compensated by the below avoided cost rates of the latter years of the rate term, ratepayers and the Commission cannot be indifferent to the fact that the above avoided cost portion of the rate coincides with the rate increases that will result from the rate recognition of the commercial operation of Seabrook.

The Commission found in Re Public Service Co. of New Hampshire, Docket No. DF 84-200, Report and Ninth Supplemental Order No. 17,558 (April 18, 1985) (70 NH PUC 164, 66 PUR4th 349), 88-89 and in Report and Fifteenth Supplemental Order No. 17,939 (Nov. 8, 1985) (70 NH PUC 886) that approximately 135 net MW of QF power (installed capacity discounted by the capacity factors of each technology) was compatible with the completion of Seabrook I and the loss of the UNITIL load at a reasonable range of retail rates.[1(2)]

Pursuant to DE 83-62, the Commission had approved the following amounts of QF power on long term rates:

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

Technology	Installed Capacity	Capacity Factor	Net Capacity
Hydro	19.836	.50	9.918
Wind	18.65	.275	5.036
Wood	67.30	.85	57.205
Total	105.786		72.159

Given this level of capacity with approved long term rates, the Commission recognized that it was necessary to establish priorities for considering long term rates for even the mature projects with timely filings among the nearly 600 MW of QF capacity that have filed pursuant to DR 85-215. It was the Commission's intent to establish a ranking of QF development by distinguishing among categories of QFs based on their contribution to the public good. We do not intend to discriminate among individual QFs of equal value to the public interest.

Therefore, the commission established priorities broadly based on technology. It is our interpretation of the intent of the federal Public Utilities Regulatory Policies Act, Sections 201 and 210 (PURPA) and the state Limited Electrical Energy Producers Act, N.H. RSA 362-A (LEEPA) that they were promulgated to encourage the development of alternate energy and the more efficient use of fossil fuels. The Declaration of Purpose of LEEPA, for example, states that:

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.

In particular, both pieces of legislation were intended to foster a decreased dependence on fossil fuels, especially foreign oil. Neither was intended to increase the dependence, particularly of New England, on fossil fueled electrical generation, however efficient that increased generation may be.

Therefore, in assigning priorities to the projects that have filed pursuant to DE 83-62 and DR 85-215, orders issued to implement PURPA and LEEPA, we have assigned a higher priority to projects based on renewable resources (hydro, wood,

municipal solid waste) than to those based on fossil fuels. This ranking also recognizes that the wood and MSW projects have positive externalities that are also in the public interest. Wood projects provide employment in the depressed lumber industry and New Hampshire's northern counties and aid in forest management; waste to energy projects contribute to the solution of problems in disposing of municipal solid waste.

Accordingly, we have thus far approved the following amounts of QF capacity under the DR 85-215 and DR 86-134 long term rates:

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

Technology	Installed Capacity	Capacity Factor	Net Capacity
Hydro	15.075	.50	7.538
Wood	50.700	.85	43.095
MSW	37.600	.85	31.960
Multifuel	9.000	.85	7.650
Total	112.375		90.243

Added to the capacity approved under DE 83-62, the capacity currently approved by the Commission is 215.15 MW of installed capacity, which translates into 162.402 MW of net discounted capacity. In addition, there is still pending before us 22.75 MW of installed capacity of wood projects.

The approximately 215 MW of installed capacity and 160 MW of net capacity are very close to the target amounts, especially assuming some diminution of projected capacity caused by some projects that have approved rates but that will not reach commercial operation. While we will be able to consider the remainder of the wood-based projects (22.75 MW), it is clear that the amount of QF capacity we can reasonably approve will be exhausted before we reach consideration of those projects with lower priority status, if we are still to remain within the constraints of the methodology of DE 83-62 and DR 85-215, and our findings in DF 84-200. Consideration of this next tier of projects must be deferred until our findings in Re Public Service Co. of New Hampshire — Avoided Cost Docket No. DR 86-41, in which we will be reviewing and revising the methodology, the terms and conditions and the level of the long term rates available through the Commission.

Our Order will issue accordingly.

ORDER

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

ORDERED, that the long term rate petitions of Industrial Cogenerators Corp., American Cogenics, Enesco Merrimack Cogeneration Inc., Kearsarge Power & Light, Plaistow Power & Light, A. Johnson Cogen, Inc., and Cygna Energy Services be, and hereby are denied and that dockets numbers DR 86-108, DR 86-119, DR 86-121, DR 86-124, DR 86-126, DR 86-132, and DR 86-133 be and hereby are closed.

By Order of the Public Utilities Commission of New Hampshire this seventh day of January, 1987.

FOOTNOTES

[1]Commissioner Aeschliman found that completion of Seabrook I and the development of the Commission's estimate of SPP's, together with the loss of the UNITIL load, was only possible within a reasonable range of retail rates if PSNH was required to absorb significant costs. In addition, Commissioner Aeschliman found that a reasonable range of retail rates under these assumptions depended upon Seabrook completion within the debt levels approved. DF 84-200, Re Public Service Co. of New Hampshire, Report and Ninth Supplemental Order No. 17,558 (April 18, 1985) (70 NH PUC 164, 66 PUR4th 349), Separate Opinion of Commissioner Aeschliman at 2, 3, 69-72; and Fifteenth Supplemental Order No. 17,939, Separate Opinion of Commissioner Aeschliman (70 NH PUC 886).

==========

NH.PUC*01/09/87*[60224]*72 NH PUC 18*Pittsfield Aqueduct Company, Inc.

[Go to End of 60224]

72 NH PUC 18

Re Pittsfield Aqueduct Company, Inc.

DR 80-125
Order No. 18,535

New Hampshire Public Utilities Commission

January 9, 1987

ORDER authorizing a water utility to recover expenses associated with an expansion of its metered service.

RATES, § 604 — Water rates — Meter charges.

[N.H.] The commission authorized a water utility to increase its rates to recover expenses associated with an increment of a gradual expansion of metered service authorized by a previous commission order.

By the COMMISSION:

ORDER

WHEREAS, in this docket and Order No. 15,556, (67 NH PUC 250), Pittsfield Aqueduct Co., Inc. (Pittsfield) was directed to proceed with the annual installation of 50 new meters until all customers have metered service; and

WHEREAS, Pittsfield has submitted that the capital cost of 50 meters installed during the year 1986 is $7,281.50, with attendant increased operating expenses of $364 for depreciation and $80 for meter reading; and

WHEREAS, the increases so incurred result in an additional revenue requirement of $1,382.54; it is hereby

ORDERED, that Pittsfield Aqueduct Company, Inc., may increase its revenue, effective with all bills rendered after January 1, 1987, by $1,382.54.

By order of the Public Utilities Commission of New Hampshire, this ninth day of January, 1987.

==========

NH.PUC*01/09/87*[60697]*71 NH PUC 25*Chichester Telephone Company

[Go to End of 60697]

71 NH PUC 25

Re Chichester Telephone Company

Additional parties: Continental Telephone Company of New Hampshire, Dunbarton Telephone Company, Granite State Telephone, Kearsarge Telephone Company, Meriden Telephone Company, Merrimack County Telephone Company, Union Telephone Company, and Wilton Telephone Company

DE 84-285, Order No. 18,038

New Hampshire Public Utilities Commission

January 9, 1987

REPORT and order concerning plans for the detariffing of customer premises equipment, and concerning proposals for the sale of such equipment to telephone customers.

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

It is the intention of the commission to provide for the detariffing of telephone customer premises equipment on a basis that is fair to both ratepayers and investors; accordingly, the

commission rejected a telephone company proposal to sell its embedded equipment to customers at a value in excess of net book value. [1] p. 26.

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; (7) following the 60 day selection period, any remaining CPE will be transferred to an unregulated or below-the-line operation. [2] p. 44.

Service, § 435 — Telephone — Customer premises equipment — Detariffing — Implementation.

Discussion, by the commission, of the Federal Communications Commission's requirements that states must comply with, in developing and implementing a plan for the detariffing of telephone customer premises equipment; specific commission goals for the accomplishment of detariffing outlined and individual utility detariffing proposals addressed. p. 26.

APPEARANCES: Mrs. Eleanor L. Shaw, President for Chichester Telephone Company; Peter Montgomery, Plant

Page 25

Manager for Dunbarton Telephone Company; Frederick J. Coolbroth, Esquire for Granite State Telephone; Richard N. Brady, Manager for Kearsarge Telephone Company; James H. Henley, Commercial Manager and Owen French, Financial Department for Merrimack County Telephone Company; Wallase J. Flaherty, Senior Vice President for Union Telephone Company; Robert L. Howard for Wilton Telephone Company.

By the COMMISSION:

REPORT

I. INTRODUCTION

Starting in early March 1984, the Commission received from most of its telephone utilities tariff filings proposing terms and conditions under which they would sell their embedded customer premises equipment (CPE). Each of these was suspended pending Commission investigation and decision. These filings were:

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

Docket Filing Suspension NH PUC

Company	No.	Date	Order	Citation
Chichester Telephone Co.	DE 84-285	Oct. 2, 1984	17,265	69 NH PUC 613
Dunbarton Telephone Co.	DR 84-282	Oct. 1, 1984	17,267	69 NH PUC 614
Granite State Telephone	DR 84-289	Oct. 1, 1984	17,266	69 NH PUC 614
Kearsarge Telephone Co.	DR 84-57	Mar. 6, 1984	16,949	69 NH PUC 194
Meriden	DR 85-357	n/a	n/a	n/a
Merrimack County Telephone	DR 84-281	Oct. 1, 1984	17,268	69 NH PUC 615
Union Telephone Co.	DR 84-299	Oct. 5, 1984	17,262	69 NH PUC 612
Wilton Telephone Co.	DR 84-377	Dec. 11, 1984	17,383	n/a

While sale of imbedded equipment of Continental Telephone Company of New Hampshire has been addressed in DR 83-290, certain requirements resulting from decisions in FCC dockets apply to that company as well as to its sister company, Continental Telephone Company of Maine. The unique operations of the Dixville Telephone Company and the Bretton Woods Telephone Company will be addressed in another docket.

On July 12, 1985, the Commission issued an Order of Notice setting these matters for public hearing at the Commissioner's Concord offices on September 10, 1985 at 10:00 A.M. Because of conflicts affecting several of the petitions, that hearing was set aside by letter of August 8, 1985. A second Order of Notice was issued on September 12, 1985, rescheduling the hearing on these dockets for October 15, 1985 at 10:00 A.M. Because of its generic nature, all companies were scheduled for the same date and time. Subsequent to the issue of that Order of Notice, it was discovered that Meriden Telephone had not been included. Since it was determined that inclusion of that company would be in the public interest, an additional Order of Notice was directed to Meriden for the October 15th hearing.

The October 15, 1985 hearing was convened as scheduled, with no intervenors present.

[1] The Federal Communications

Page 26

Commission (FCC) in its Docket No. 81-893 has adopted a framework for the detariffing of customer premises equipment (CPE). The procedure that was adopted provided maximum flexibility for the states to develop plans which meet the particular circumstances of independent telephone companies within their jurisdictions. The FCC has stated that:

States may develop plans which set, or may approve Independents' plans which indicate: conditions and requirements related to valuation, lease rates and sales prices, price predictability, billing services, maintenance and support, the duration of the transition period, and other similar matters which states find appropriate to accomplish detariffing of CPE.

The Third Report and Order in CC Docket No. 81-893 provided that states must certify that they have adopted a plan of action taken to ensure detariffing of CPE by December 31, 1987. The state plans also must accomplish a balancing of ratepayer vs. investor interests as established in the Democratic Central Committee decision (158 U.S.App.D.C. 7, 485 F.2d 786) and accounting and tax procedures specified by the FCC must be followed. The FCC also set the requirement that state plans must include mechanisms which provide the opportunity for investors to achieve full capital recovery "above the line" before December 31, 1987.

In order to accomplish the goals for deregulation of customer premises equipment, the FCC

in its Third Report and Order in Docket CC 81-893, stated that states must comply with the following requirements in developing and implementing detariffing of embedded CPE:

1. Implementation timetable.

2. Valuation guidelines.

3. State certifications.

4. Accounting and tax requirements.

5. Other detariffing rules.

Each independent telephone company in this state has addressed its own particular situation and has proposed plans to implement detariffing. We have been given the flexibility to develop plans for each company separately. Our objective in each case will be to accomplish detariffing by providing fair and equitable treatment to the ratepayer and the investor. This Commission has the following goals that we wish to accomplish in our plan to detariff CPE.

1. Detariffing will be accomplished by December 31, 1987. This date is consistent with phasing CPE out of the jurisdictional separation process, which will be accomplished over a five-year period commencing January 1, 1983. We will attempt to detariff as soon as possible in 1986.

2. Valuation will, generally, be at an adjusted net book value with a transaction fee added. Adjusted net book value is defined as net book value less applicable accumulated deferred and investment tax credits.

3. Customers will have the options of either a lump sum purchase, or returning the phone(s) or monthly installments based upon current lease rates.

Page 27

4. Upon completion of the sales program, any remaining CPE will be transferred to an unregulated operation either an affiliated subsidiary or a below-the-line operation. Prior to the transfer, each utility will be required to submit an accounting of the status of the CPE account, its associated reserve and deferred taxes. The proposed method of valuation of the embedded plant to be transferred will also be submitted. Each company wi11 identify any over or under recovery which will require adjustment. Our goal is to arrive at a zero net book value by December 31, 1987.

5. Until such time as deregulation takes place, accounting for the sale of embedded CPE will be in accordance with the retirement and salvage accounting procedures adopted by this Commission. After the deregulation of embedded CPE, any CPE maintenance and support functions will be accounted for as prescribed by the Fifth Report and Order in CC Docket No. 81-893. The amendments to the "Uniform System of Accounts for Class A and Class B Telephone Companies" is adopted herewith, and is included as an appendix hereto.

6. The Commission will implement this plan on January 1, 1986. Each company will implement its plan by March 1, 1986. Year end 1985 book values will be submitted in detail presenting the gross plant value for CPE, the associated reserves and deferred taxes. (The values submitted shall include only embedded CPE owned by the utility, including inventory, as of

January 1, 1983. Any company which has included new CPE (purchased after January 1, 1983) will transfer the appropriate amounts to the proper unregulated accounts.

Since each independent telephone company in this state has filed its own plan and each has its distinct characteristics, we will address each company separately in order to account for the differing views and proposals.

CHICHESTER TELEPHONE COMPANY (DR 84-285)

Chichester Telephone Company ("The Company") filed a tariff for the sale of equipment on October 2, 1984. The tariff provides for the conditions and charges applicable to the transfer of ownership to customers of qualified station equipment, which comprises all single and party line residential and business station equipment leased from the Company, excluding inside wire. The tariff proposes to exclude the sale of single-line telephones connected to or used with key or multi-line (complex) equipment, except when sold in conjunction with complex equipment.

The plan further proposed to continue to offer existing customers the option of leasing their single line, party line and complex telephones or equipment. The equipment could be purchased or retained on a monthly lease basis. Coin phones were excluded. The Company stated that the equipment offered was intended for sale to subscribers of telecommunications services of

Page 28

Chichester Telephone and is not offered as being compatible with the equipment of any other telephone company or key telephone system.

All customers who lease qualified stations equipment were to be notified that they had three options regarding their qualified station equipment.

1. The customer may elect to return the Qualified Station Equipment to the Telephone Company and purchase Telephones from another source.

2. The customer may elect to purchase the Qualified Station Equipment in place by notifying the Telephone Company of his intent.

3. The customer may elect to retain the equipment on a monthly lease basis as specified elsewhere in the tariff.

The plan proposed to continue to lease equipment to customers should they fail to notify the Company of the intent to purchase in-place station equipment. Any customer who notified the Company of the intent to purchase would pay for the station equipment through twelve (12) equal monthly installment payments. The purchase price was to be based upon average net book value, by type of equipment, as of April 30, 1984 and was not to be priced less than average net book value. Title and risk of loss or damage were to pass to the customer when he notified the Company that the offer to purchase was accepted under the terms and conditions of the filed tariff. At that time the Company would have no liability for the repair or replacement of the equipment except that the telephones purchased in place would be warranted by the Company for a period of 30 days from the date of purchase. Repaired or replaced station equipment would receive an additional 30 day warranty to begin on the day of repair or replacement. The plan further provided for the purchase of additional phones from Company inventory with payment in

full required. The monthly payment plan would not be available for inventory equipment.

Payment for in-place qualified station equipment would be accomplished at one of the following options:

1. Payment in full at time of purchase.

2. Monthly payment billing program to commence with the first bill after notification by the customer of intent to purchase.

3. Prices:

In-place purchase price: Monthly payment $ .90 for 12 months. Inventory purchase price $10.80.

4. Type of Qualified Station Equipment

Desk telephone, rotary dial. Wall telephone, rotary dial.

In the event that a customer were to terminate service or be disconnected for non-payment of a bill before all monthly payments for station equipment were made he would be billed the full purchase price less any payments made to date. If a customer were reinstated with service and he had not paid the outstanding amount due on the in-place sale, the monthly billing would be reinstated until the purchase

Page 29

price has been recovered. The Company would not terminate telephone service for non-payment of the bill which related to the purchase of station equipment.

Through data requests by staff the Company has stated that it has purchased less that $800 worth of new deregulated equipment since December 31, 1982 and that deregulated equipment has not been maintained through separate accounts. The Company planned to separate regulated and deregulated activities beginning January 1, 1985. The approximate book value of embedded customer premises equipment at June 30, 1985 is $10,296. The Company proposes to account for the proceeds from telephone sales as salvage to be credited to the accumulated depreciation reserve account. Any net gain or loss realized on the transaction would be transferred to operating income or loss.

In accordance with the plan detailed earlier in this decision, the Commission finds that Chichester Telephone Company should file revised tariffs to allow customers to purchase in-place station equipment at net book value less any applicable investment tax credits and deferred taxes as of December 31, 1985. The calculation of the sale price should be submitted to this Commission by March 1, 1986, along with an estimate of the time required to complete the sale. The customer should be allowed to purchase his equipment by applying the monthly lease charge until the previously mentioned value is fully recovered. Customers should also be allowed the option to purchase their equipment outright in lieu of through the monthly lease. The warranty provisions and the disconnect provisions as filed by the Company will be accepted. On or about December 31, 1986, the Company will file a status report of the station equipment accounts with this Commission. At that time provision will be made, based upon the status, to transfer any residual value, including deferred taxes, to non-regulated accounts. In the event

there are any residual values that have or have not been accounted for, this Commission will provide for a period of amortization of the same. In no event will this plan allow for the sale to extend beyond December 31, 1987. It is our inten- tion, based upon the data which we have received, that the sale of in-place equipment will have been accomplished by December 31, 1986.

CONTINENTAL TELEPHONE COMPANY OF NEW HAMPSHIRE

(DR 83-290)

Continental Telephone Company (Contel) filed proposed revisions to its tariffs to sell certain customer premises equipment on September 1, 1983. That plan was approved by this Commission on March 21, 1984 after notice and hearing. Contel proposed a sales plan for certain single-line instruments comprising all single-line residential and business station equipment leased from the Company, excluding inside wire, single-line station equipment associated with PBX or multi-line equipment, telemergency, municipal services, coin, data, paging, Ericofones, impaired hearing equipment, outdoor equipment, or Official Company station equipment. The plan provided for a 30-day notification period after which the Company would transfer ownership of all qualified station equipment to the subscriber. The subscriber would pay

for that equipment through installment payments equal to their existing lease rates until the purchase price had been recovered. The purchase price was based on net book value at the time the plan was approved. The customer was to be given a 30-day period in which to elect to return all or a portion of the station equipment, but equipment may not be returned and will not be accepted for return after the thirty (30) day period. A thirty (30) day warranty was provided from the date of ownership. If a customer terminated services subsequent to the date of transfer of ownership, he was to be billed the full net book value less any payments made to date. The Commission allowed Contel's plan on March 21, 1984 and provided a notice period of ninety (90) days wherein customers could consider their ownership option, and return all or portions of their equipment. We further provided that Contel could not terminate telephone service for nonpayment of the bill which relates to the purchase of their telephone equipment. The ninety (90) day period recognizes that some New Hampshire residents are absent from the state for periods in excess of thirty (30) days.

Contel has advised this Commission that as of November 30, 1985 it has approximately $35,000 of investment, at net book value in its rate base. The majority of this investment is for approximately 27 key systems with approximately 160 key phones. The remainder represents various standard phones, automatic dialers, speakers, etc.; all PABX investment is fully depreciated.

Contel proposes to deregulate this CPE and remove all related investment, revenue and expenses from regulated operations effective January 1, 1986. All investment would be transferred "below-the-line" at net book value and all future revenues and expenses would be recorded "to below the line accounts. Continental takes the position that net book value is the appropriate valuation methodology to be used in this transfer since the majority of the equipment is technologically obsolete, having little, if any, fair market value. Contel also proposes that with

the filing of the compliance tariff in Docket No. 85-219, its present rate case, it would remove all terminal equipment offerings from its tariff.

Continental Telephone Company will be required to transfer its remaining investment in customer premises equipment concurrent with the filing of a compliance tariff in Docket No. 85-219. Prior to that date, Contel will be required to file a method for valuation of its remaining investment. Such valuation should include the actual book value, the associated depreciation reserve and associated deferred taxes. The estimated remaining service life should also be submitted.

DUNBARTON TELEPHONE COMPANY

(DR 84-282)

On October 1, 1984, Dunbarton Telephone filed proposed tariff revisions related to the sale of regulated embedded station equipment and specialty products. The telephones and equipment to be sold are intended for use with the telecommunications network, excluding coin services. All station equipment, other than those purchased in-place, would be available for inspection and sale at the Company office. Title and risk of loss or damage pass to

Page 31

the customer upon delivery of the equipment to the customer or his agent or when the customer notifies the Company that the offer to purchase in-place equipment is accepted. Equipment sold is to be warranted for thirty (30) days. The tariff provides that customers may bring or mail equipment needing repair to, and may pick up replacement equipment, at the Company during established working hours and call for equipment at the same location when repairs are complete. Repaired equipment can be shipped to the customer at his expense. The selling price does not include charges for associated services or equipment. Single-line telephones and specialty equipment, other than purchased in-place, may be returned for refund within ten (10) days from the date of purchase, provided the returned product is undamaged, unaltered and in the original packing case. Single-line telephones and specialty products sold inplace are not eligible for refund. The Company has filed the following schedule for the sale of embedded equipment. All new phones purchased after January 1, 1983 have been leased or sold on a deregulated basis.

The following rates and charges do not include charges for associated services or equipment. Payment for embedded equipment sold under this section would be accomplished by one of the following options:

1. Payment in full at time of purchase.

2. Special installment billing program for inplace telephones.

Specialty Products

Prices for the sale of Specialty Products would be negotiated based upon the Net Book Value then in effect less any costs incurred for reconditioning as appropriate.

The Company proposes to sell its inplace sets by applying the monthly lease charge for a period of fourteen (14) months as the purchase price unless the customer pays in full at one time

or returns the equipment within thirty (30) days after being notified. The prices that the Company has proposed are based upon recovering the net book value as of December 31, 1983. Those amounts are stale and thus Commission will expect the Company to file revised tariffs based upon the net book value less investment tax credits and deferred taxes applicable to CPE, as of December 31, 1985. Once those fig- ures are supplied the appropriate period for recovery of embedded equipment costs can be established. Two years of activity have occurred in account 231 and the appropriate depreciation reserve and deferred tax accounts. The calculations of revised sale price should be submitted to this Commission by March 1, 1986, along with an estimate of the time required to complete the sale of embedded CPE. The customer will be allowed to purchase his equipment by applying the monthly lease charge until the revised sales price has been fully recovered. Customers will also be allowed to purchase their equipment through a one-time payment. The warranty provisions and disconnect provisions will be accepted as filed.

After a filing of new sales prices has been made and accepted, appropriate bill stuffers should be sent to each customer which clearly outline his options, as approved by this Commission.

Page 32

GRANITE STATE TELEPHONE

(DR 84-289)

On October 1, 1984, Granite State Telephone (the "Company") filed a proposed tariff providing for the sale of in-place embedded telephone equipment to existing customers, effective November 1, 1984.

The filing provided existing customers with the opportunity to purchase their qualified station equipment inplace or to continue leasing their equipment on a regulated basis. Qualified station equipment included all singleline and party-line residential and business stations equipment, key telephone systems or multi-line complex equipment and auxiliary equipment. The sale of single-line telephones connected to key or multi-line equipment was excluded from this offer, except as sold in conjunction with complex equipment.

The customer would have three options:

1. The customer may elect to return the equipment to the telephone company and purchase telephones from another source.

2. The customer may elect to purchase the equipment in-place by notification to the telephone company of his intention.

3. The customer may continue to lease the equipment on a regulated basis.

The Company proposed a price schedule by type of equipment which detailed the price and monthly payment schedule for in-place sets in addition to a price for equipment in inventory. The prices proposed reflected what the Company felt were fair market conditions at the time of the filing, which the Company claims are at no time less than average net book value. The customer was given the option to purchase in-place equipment in one lump sum or in three equal monthly installments. A thirty (30) day warranty for equipment purchased that was applicable to

defects that rendered the equipment inoperable was proposed. Maintenance services, either repair or replacement, would receive an additional 30-day warranty period after such work had been completed. Telephone service would not be terminated for nonpayment of that part of the bill which was related to the purchase of equipment.

On October 8, 1985, Granite State Telephone submitted testimony which proposed revised purchase prices for equipment in-place and in inventory. A fair market value price was proposed which was developed using average net book value plus an additive which would bring the purchase price to a competitive level based on current market conditions. It is claimed that the purchase price is approximately twice the average net book value. A sixty (60) day purchase time period was proposed, after which all unsold equipment, both in-place and in inventory, would be transferred at net book value to a separate affiliate, Granite State Telatron. The Company claims that the transfer price at net book value is reasonable because it reflects a wholesale cost to Granite State Telatron. They further claim that additional expenditures will be required to market the equipment. Granite State Telatron, the

Page 33

unregulated affiliate, would offer the equipment on a lease or purchase basis.

It is this Commission's intention to comply with the schedule for deregulation of station equipment by the independent telephone companies in this state. It is also our intention to provide for the deregulation on a basis that is fair to ratepayers and the investor. Granite State Telephone has asked to sell its embedded equipment at a value in excess of net book value. This methodology would provide a salvage value greater than net book value and, therefore, would result in a lowering of net book value. Therefore, net book value would be lowered for the amount to be transferred to the unregulated affiliate. We find that proposal to be unfair and unequitable to the ratepayer. The ratepayer has paid rates which contributed to the depreciation reserve through depreciation expense. It would be inappropriate to ask the ratepayer to pay higher salvage, contributing to the depreciation reserve, and to transfer the benefit to an unaffiliated company. The FCC has set guidelines which provide for the ratepayer to share in any gains or losses from the sale of sets, in accordance with the Democratic National Committee decision (158 U.S.App.D.C. 7, 485 F.2d 786).

In accordance with the principles set forth in the initial portion of this decision, Granite State Telephone is ordered to provide this Commission with the net book value of its embedded telephone equipment as of December 31, 1985. That report will be required by March 1, 1986 along tariffs designed to collect the net book value from customers, either by outright purchase or by applying the monthly lease rate over an appropriate period of time until net book value is fully collected. By applying the lease rate to the net book value the Company should assure that more of the equipment will be sold. The Commission will be further assured that any residual value to be transferred to the separate affiliate will not provide subsidization and possibly indirect competition to utility operations.

The March 1, 1986 filing should provide a period of sixty (60) days for customers to make their choices and should provide adequate notification of the plan. The Commission will expect a report on the results of the sale of embedded equipment and the status of the applicable accounts

by December 31, 1986, in order that provisions can be made to amortize any account balances and to determine the valuation at which embedded equipment should be transferred to non-utility operations. As stated earlier, we will adopt the accounting of the FCC as outlined in the Fifth Report and Order. (see attachment)

KEARSARGE TELEPHONE COMPANY

(DR 84-57)

On March 5, 1984, Kearsarge Telephone Company (Kearsarge) filed its tariff related to the sale of its in-place telephone equipment to subscribers. The filing included a separate plan for the sale of in-place single-line equipment and for the sale of in-place complex terminal equipment.

Single-line equipment would be sold at net book value, plus a transaction charge. Any number of in-place telephones may be purchased. The Company does not warranty that the telephone equipment will be compatible with the equipment of any other

Page 34

telephone company or with party-line, key or PABX service. All equipment would be offered with a thirty (30) day limited warranty. During the warranty period, any phone would have to be returned to the telephone company for repair. If a premises visit is requested, service connection charges apply. If a phone is handwired, no premises visit charge would apply. The Company proposes that customers pay for the set at the time of purchase or be billed on their regular monthly bill. A payment plan of three (3) monthly equal payments is proposed for purchases totaling more than thirty dollars ($30).

The sale-in-place of complex terminal equipment is proposed to be sold at the Company's discretion. The prices would be on a negotiated basis with the price, under ordinary circumstances, not below net book value. The sale of complex equipment at below net book value would be considered only after it was determined that such equipment is no longer marketable at net book value and it is not anticipated that it will remain in-service at tariffed monthly rates. Any incurred rehabilitation, installation, and administrative costs would be added to the selling price. Payment would be in full at the time of purchase or when billed on the next regular telephone bill. Payment in full would be billed on the customer's final bill in the event that local exchange service is terminated and no regular monthly bill would be issued.

As we have provided for the other telephone companies, Kearsarge should update its net book value to December 31, 1985. The Company shall submit the updated data by March 1, 1986, providing the net book value by type of equipment, along with associated investment tax credits and associated deferred taxes. As it is our intention to transfer any residual equipment to "below-the-line" operations, we will transfer the associated investment tax credits and deferred taxes. Therefore, we intend to provide the benefits of the credits to ratepayers through the purchase price of the telephone credits.

In order to attain consistency among the independent telephone companies we shall order Kearsarge Telephone to file tariffs which reflect the net book value less investment tax credits and deferred taxes. The purchase price should be realized by allowing singleline in-place customers the opportunity to continue payment of their monthly lease fees until the adjusted

purchase price is realized. The Company will be allowed to negotiate a sales price for complex in-place equipment.

The Commission's goal is to establish a sale and transfer of embedded customer equipment in a time frame which will be accomplished as soon as possible. It is also our intention to transfer the equipment at a price that will not subsidize below-the-line operations and to provide customers the easiest method to purchase their equipment. By providing customers the opportunity to purchase their equipment by applying the monthly lease rate, we feel that we will be assuring the highest possible transfer of equipment to customers and minimizing the possibility of amortization of stranded investment.

MERIDEN TELEPHONE COMPANY

(DR 85-357)

Upon receipt of tariff filings from the majority of independent telephone

Page 35

companies regarding provisions for the sale of their embedded telephone equipment, the Commission issued an Order of Notice setting all cases for hearing on September 10, 1985. This was subsequently deferred until October 15, 1985. For unknown reasons, Meriden failed to file tariff revisions as had other independent telephone companies. This was discovered subsequent to the Order of Notice setting the October 15 hearing. A separate Order of Notice was issued to Meriden Telephone Company on October 9, 1985 enjoining that company to participate on October 15, with any testimony or exhibits filed on that date.

Meriden failed to appear at said hearing and has not filed any testimony or exhibits. Based upon this Commission decision on other like telephone utilities, it will direct Meriden to follow standardized procedure regarding sale of embedded telephone equipment. Our order will issue accordingly.

MERRIMACK COUNTY TELEPHONE

(DR 84-281)

On October 1, 1984, Merrimack County Telephone Company (the "Company") filed a tariff to provide for the sale of embedded terminal equipment to its subscribers. The proposed program allows the Company to sell single-line telephones, specialty equipment and complex terminal equipment at a fair market value based on the current net book value. An ongoing program was offered by which equipment would be offered as long as saleable equipment was available. The Company's plan for specialty products and complex terminal equipment was to provide the customer with the option to purchase or continue leasing at tariffed rates.

Single-line telephones would be offered both from inventory and on an in-place basis. Telephone sets sold from inventory would be refurbished and offered as long as available. The sale of in-place telephone sets would be a closed term offering. In-place singleline telephones associated with singleline business and residence services would be offered for sale to current subscribers for a period of sixty (60) days from the effective date of the filing. During that period all customers would receive information notifying them of the option and asking them to choose

one of the following options:

1. Purchase their telephone(s) inplace.

2. Turn in embedded Company owned telephone(s) and purchase their own phone elsewhere.

3. Turn in embedded Company owned telephone(s) and lease a deregulated set(s).

The Company offered three (3) payment plans:

1. Payment in full at the time of purchase.

2. Purchase amount to be billed on the first months regular telephone bill.

3. Special installment billing program.

Under the special installment billing program the customer would be billed for embedded sets for twelve (12)

Page 36

months at the current monthly tariff rate. Any customer who had not specified a purchase option by the close of the offering would be automatically enrolled in the special installment billing program. All equipment would be covered by a 30-day warranty from the date of purchase. The warranty for single-line telephones and specialty products was limited to electrical components and labor required to properly repair them.

The Company has estimated that there would be a loss of revenue of $80,691, which would be offset by a reduction of $84,433 in maintenance expenses. The prices for in-place, single-line phones were based on the net book value as of December 31, 1984. Net book value was derived by pricing equipment based upon 1983 inventory prices. Inventory prices were applied to the number of telephones and then applied to the net book value to arrive at a price per phone.

As approximately one year has transpired since the original filing, the Company will be required to file an updated filing using the adjusted net book value as of December 31, 1985. Adjusted net book value is defined as net book value less investment tax credits and deferred taxes. A filing of a revised tariff pages at the updated value will be filed by March 1, 1986. A transaction fee of $5 may be added to the cost of each transaction. The transaction fee will apply to each transaction regardless of the quantity of telephones. The transaction fee should not be charged to any subscriber who purchases his phone by payment in full or by billing on the first monthly bill. Specialty equipment and complex terminal equipment will be negotiated based upon the adjusted net book value, plus any costs incurred to recondition.

Customer will be allowed a period of 60 days from March 1, 1986 to make a decision whether to purchase or return their telephones. Any customer who has not acted within the 60 day period will be enrolled in the monthly lease program, at current lease rates, until the purchase price has been fully recovered. Payment in full will be required for any customer who terminates service or is disconnected for non-payment.

UNION TELEPHONE COMPANY

(DR 84-229)

Union Telephone Company filed tariff revisions on October 5, 1984 to provide conditions

and charges applicable to the transfer of ownership to customers of qualified station equipment, which includes single-line, party line and business station equipment leased from the Company. The offering excluded single-line telephones connected to or used with key or multi line (complex) equipment, unless sold in conjunction with complex equipment.

The tariff provided for customers to continue the option of leasing their equipment. Customers could purchase equipment or retain them on a monthly lease basis. Telephones and equipment, other than those purchased inplace, were available for inspection and sale. The equipment offered was intended for sale to subscribers of this Company and was not offered as being compatible with any other telephone company or key telephone system.

Customers would be notified that they had three options:

1. The customer may elect to return the qualified station equipment to the Telephone Company and purchase new equipment from any source.

2. The customer may elect to purchase the qualified station equipment in-place by notifying the Telephone Company of his intent.

3. The customer may elect to retain the equipment on a monthly basis as specified elsewhere in this tariff.

When notification of the intent to purchase was received, the customer was to pay for the qualified station equipment through three equal installments. The purchase price was to be no less than the net book value by type of equipment as of June 30, 1984. Title of risk of loss or damage was to pass to the customer when he notified the Company that the offer to purchase was accepted.

Equipment purchased in-place was to be warranted for a period of 30 days from the date of purchase. Equipment purchased from inventory would be warranted for 180 days.

Payments for in-place qualified station equipment were proposed by the following options. Inventory equipment was to be paid for at the time of purchase.

1. Payment in full at time of purchase.

2. Monthly payment billing program to commence with the first bill after notification by the customer of intent to purchase.

Prices of complex equipment and specialty auxiliary equipment were to be based upon no less than the average net book value at the time of sale and was to be negotiated on a per occasion basis. Cost incurred for reconditioning were to be charged in addition to the selling price.

Any customer terminating service prior to completion of payments would be billed in full less any payments made to date.

If a customer were disconnected, similar terms were proposed. The Company would not terminate telephone service for non-payment of the bill which relates to the purchase of CPE.

Union Telephone Company filed data responses to staff's interrogatories which indicate that

the net book value of station apparatus was $36,057. Analysis of the data presented indicate that sets and accessories were over depreciated by $4,388 and key systems were under depreciated by $11,858. Pay stations and company owned official equipment were still included in this account with a net book value of $28,587. The Company witness testified that the transfer of the latter had not been officially accomplished in order to provide continuity to annual reports and for comparative purposes. The Company will be expected to transfer pay station and official station equipment to the proper accounts immediately.

The Company's sales plan would result in a reserve balance in excess of the plant in service. It is this Commission's intention that a fair balance be achieved between ratepayers and investors. In this case any equipment transferred to unregulated activity would have no book value. Union Telephone Company will be ordered to file updated tariff revisions for the sale of

Page 38

embedded equipment by March 1, 1986, based on adjusted net book value. A status report detailing the activity in account 231 and associated depreciation reserve will be submitted. A plan for the valuation of embedded equipment in inventory will be filed so that the Commission can determine the appropriate action to take when transferring any surplus equipment to nonregulated accounts.

Complex terminal equipment may be sold by negotiation based on adjusted net book value and any refurbishing costs.

WILTON TELEPHONE COMPANY

(DR 84-377)

On December 11, 1984, Wilton Telephone Company (the "Company") filed tariff revisions outlining procedures to be followed for the sale of telephone equipment from inventory and on an in-place basis. The filing provides for the Company to offer single-line telephones from its embedded base at a fair market value based on the net book value. In-place single-line telephones would be offered for sale to current subscribers for a period of 90 days. During the period all current subscribers would be provided information about the offering and requesting them to select one of the following options:

1. Purchase their telephones inplace.

2. Return their present companyowned telephones and purchase their own phones from the company or elsewhere.

3. Return the company-owned telephones and lease a deregulated telephone.

The Company offered the following payment options:

1. Payment in full at time of purchase.

2. Full purchase amount to be billed on first months regular telephone bill.

3. Special installment billing plan.

The Special Installment Billing Plan would allow payment of the purchase amount over a 12 month period on the regular monthly bill. Customers who did not specify a purchase option at

the close of this offering will be automatically enrolled on the Special Installment Plan.

Specialty products and complex terminal equipment were proposed to be purchased or leased continued at the subscribers option. Prices governing the sale of these items would be negotiated with the customer at the time of the sale based upon the net book value then in effect, including any costs incurred for reconditioning.

All equipment offered for sale in this filing is covered by a 30-day warranty from the date of purchase. For singleline telephones and specialty products this warranty is limited to the electrical components and required labor to properly repair them. Warranty repair of complex equipment will cover any repairs required to correct defects in such equipment.

As approximately one year has transpired since the original filing, the Company will be required to file an updated filing using the adjusted net

Page 39

book value as of December 31, 1985. Adjusted net book value is defined as net book value less investment tax credits and deferred taxes. A filing of new tariff pages at the updated value will be required by March 1, 1986. A transaction fee of $5 may be added to the cost of each transaction. The transaction fee will apply to each transaction regardless of the quantity of telephones. The transaction fee should not be charged to any subscriber who purchases his phone in-place by payment in full at the time of purchase or purchased by billing in the first monthly bill. Specialty equipment and complex terminal equipment will be negotiated based upon the adjusted net book value, plus any costs incurred to recondition.

Customers will be allowed a period of 60 days from March 1, 1986 to make a decision whether to purchase or return their telephones. Any customer who has not acted within the 60-day period will be enrolled in the monthly lease program, at current lease rates, until the purchase price has been fully recovered. Payment in full will be required for any customer who terminates service or is disconnected for non-payment.

All of the general descriptions and regulations related to system compatibility, title, warranty, returns, etc., were similar to those proposed by the other telephone companies.

The prices offered for in-place telephones and single-line telephones in inventory is based upon net book values which are outdated. As with all of the other companies, a new filing will be made by March 1, 1986 based upon December 31, 1985 adjusted net book value (described previously).

The Commission will require each of the above companies to file tariff revisions and information required by March 1, 1986. That schedule will provide each company with adequate time to determine the information requested. The March 1, 1986 date will also provide each company with adequate time to transfer the ownership of customer premises equipment to customers or to deregulated operations. The filings will aid the Commission in determining a schedule for each company which will result in the transfer of CPE by December 31, 1987.

Our order will issue accordingly.

APPENDIX

Part 31, "Uniform System For Class A and Class B Telephone Companies," is amended as follows:

1. Section 31.01-3, "Definitions," is amended to add new items (x) and (cc), and to renumber the old items (x) -(aa) as (y) - (bb), and to renumber old items (bb) -(kk) as (dd) -(mm).

§31.01-3 Definitions.

* * * * * * *

(x) "Nonregulated activities" refers to those activities of a subject telephone company which are not common carrier telecommunications products and services subject to the tariff requirements contained in Title II of the Communications Act of 1934, as amended, and common carrier telecommunications products and services tariffed by the state commissions.

* * * * * * * *

(cc) "Regulated telephone service" refers to those activities of subject

Page 40

telephone companies that are subject to the tariff filing requirements of Title II of the Communications Act of 1934, as amended, and common carrier telecommunications products and services tariffed by the state commissions.

2. Section 31.100:1, "Telephone plant in service," is revised to read as follows:

§31.100:a Telephone plant in service.

This account shall include the original cost of the company's property used in regulated telephone service or shared with nonregulated activities at the date of the balance sheet as classified under accounts 201 to 277, inclusive. (Note also §§31.2-20, 31.2-21, 31.106 and 31.524.)

3. Section 31.103, "Miscellaneous physical property," is revised to read as follows:

§31.103 Miscellaneous physical property.

This account shall include the company's investment in physical property other than property the investment in which is includible in accounts 100:1, "Telephone plant in service," 100.2, "Telephone plant under construction," 100.3, "Property held for future telephone use," 100:4 "Telephone plant acquisition adjustment," and 106, "Nonregulated investments." It shall include the company's investment in regulated telephone property retired and held for sale.

4. Section 31.2-20 "Purpose of telephone plant accounts," is revised by adding the following after item (d):

§31.2-20 Purpose of telephone plant accounts.

* * * * * *

d) * * * * *

(See also §31.106)

5. Section 31.106, "Nonregulated investments," is added to read as follows:

§31.106 Nonregulated investments.

a) This account shall include all of the carrier's investment in physical property, both in service and in stock, together with related allowance for depreciation that is used or held entirely for other than regulated communication services. It shall include the amount of all assessments for the construction of public improvements levied against nonregulated physical property utilized in nonregulated operations. This account shall include, as a receivable, costs including taxes incurred on behalf of nonregulated operations, and, as a payable, costs incurred by the nonregulated business on behalf of regulated operations. This account shall reflect net income or loss on nonregulated activity.

(b) This account shall be subdivided as follows:

106:01 Permanent investment

106:02 Receivable/payable

106:03 Current net income or loss.

Page 41

6. Section 31.122, "Materials and Supplies," (a), and Note E are revised and (e) is added, as follows:

§31.122 Materials and supplies.

(a) This account shall include the cost (consideration being given to the adjustments outlined in paragraphs (b), (c) and (d), and Notes A, B, C, D and E) of unappropriated material and supplies held solely for use in regulated communications services or shared with nonregulated activities (including plant supplies) and of material and articles of the company in process of manufacture for supply stock. (See also Note E to this account.)

* * * * * *

(e) This account shall be subdivided as follows:

§122:01 Materials held solely for use in the carrier's operations or shared with nonregulated activities.

122:02 Materials in process of conversion

122:03 Undistributed supply expenses.

Note E: This account shall not include items in stock which are includible in account 231, "Station apparatus," or account 106, "Nonregulated investments." Materials in stock that are normally used for the repair of regulated station apparatus shall be includible in account 605, "Installations and repairs of station equipment," if company-held, and in this account if in stock and held by others.

7. Section 31.124 is removed.

8. Section 31.231, "Station apparatus," is amended to revise paragraph (a) as follows:

§31.231 Station apparatus.

(a) This account shall include the original cost of station apparatus, including small private branch exchanges installed for customers' use. (Note also accounts 221, 235 and 262). This account shall also include the cost of materials in stock which are normally used as station apparatus or additions thereto, as distinguished from items normally issued for repair purposes. (Note also accounts 106, 221, 235 and 262.) Items included in this account which are normally used as station apparatus shall remain herein until finally disposed of or until used in such manner as to be includible in other accounts.

* * * * * *

9. Section 31.232, "Station connections - inside wiring," is amended by revising Note A as follows:

§31.232 Station connections - inside wiring.

* * * * * * *

Note A: Costs charged to this account prior to October 1, 1981, in connection with inside cabling are restricted to cables used in station installations instead of wires, such as those that run from wall outlets or floor terminals to the station apparatus, and to cables used in installing

small private branch exchanges. (See also accounts 106, 221, 235, 262 and 317.) The cost of wires or cabling used in installing equipment includible in account 234, "Large private branch exchanges," shall be included in that account and shall not be included in whole or in part in account 232. (See also accounts 106, 221, and 262.) The cost of riser and distributing cables, including associated cross-connection boxes, terminals, distributing frames, etc., is chargeable to account 242:1, "Aerial cable."

* * * * * * *

10. Note E of Section 31.234 is removed.

11. Note B of Section 31.235 is removed.

12. Section 31.241, "Pole lines," is amended by removing the Note.

13. Note C of Section 31.242:1 is removed.

14. Note F of Section 31.242:2 is removed.

15. Note C of Section 31.242:3 is removed.

16. Note B of Section 31.243 is removed.

17. Note C of Section 31.244 is removed.

18. Section 31.3-30, "Purpose of income accounts," is revised as follows:

§31.3-30 Purpose of income accounts.

The income accounts (300 to 380, inclusively) are designed to show as nearly as practicable for each calendar year the total operating revenues; the total operating expenses; the income and other operating taxes of the company; the income from securities owned; the net income from

property not used in the company's communication operations; amounts accrued for interest costs; credits from interest charged to construction; miscellaneous income; expenses, and taxes; rents from and for operating property; profit or loss from nonregulated activities; and extraordinary and delayed income credits and charges. The net balance in the income accounts shall be cleared to account 400, "Balance transferred from income accounts."

19. Section 31.316, "Miscellaneous income," is revised to read as follows:

§31.316 Miscellaneous income.

This account shall include all items not provided for elsewhere, properly credited to income.

ITEMS

(Note §31.01-8)

Fees collected in connection with the exchange of coupon bonds for registered bonds.

Profits from the telephone operations of other companies realized by the company under contract.

Profits realized on the sale of temporary cash investment.

20. Section 31.317, "Income from nonregulated activities," is added as follows:

§31.317 Income from nonregulated activities.

(a) This account shall be used by those companies who, according to

our rules, can engage in offering customer premises equipment, and enhanced services and other nonregulated activities without establishing a separate subsidiary for that purpose.

(b) All revenues and expenses (including taxes) incurred in these nonregulated activities shall be recorded on separate books of account).

ORDER

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

[2] ORDERED, That Chichester 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 from inventory is excluded from installment plan.) Those not willing to buy in-place CPE will return same to the Company.

c. A transaction fee not to exceed $5.00 may be added 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 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 will be credited to "other operating revenues".

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

and it is

FURTHER ORDERED, that the following revised pages of the Chichester Telephone Company Tariff No. 3 be, and hereby are, rejected: Section 3, Original Sheets 20 through 24; and it is

FURTHER ORDERED, that Chichester Telephone Company file 1st Revised Pages 20 through 24 of its Tariff No. 3 incorporating the requirements of this Report and Order, such revisions 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.

==========

NH.PUC*01/12/87*[60225]*72 NH PUC 18*Continental Telephone Company of New Hampshire, Inc.

[Go to End of 60225]

72 NH PUC 18

Re Continental Telephone Company of New Hampshire, Inc.

DE 86-275
Order No. 18,538

New Hampshire Public Utilities Commission

January 12, 1987

PETITION by a telephone utility for condemnation of certain property owners' rights to enforce restrictive covenants and for determination of the value of the property rights to be taken; granted.

---

1. EMINENT DOMAIN, § 5 — Right to appropriate property — Necessity as a factor — Restrictive covenants.

[N.H.] The commission found that condemnation of certain property owners' rights to enforce a covenant against commercial development of a parcel of land which a telephone utility had contracted to purchase for the purpose of erecting a remote switching station was necessary

where uncontested evidence indicated that: (1) the telephone utility would expect increased

Page 18

demand for service proximate to the parcel to be developed; (2) present facilities were inadequate to meet demand in the area surrounding the land to be developed for single, rather than party line service; (3) alternative technology would be impractical; (4) alternative sites would be more costly to purchase or would require condemnation; and (5) development of an alternate site would require a zoning variance of the sort already secured for the parcel in question. p. 21.

2. EMINENT DOMAIN, § 8 — Compensation — Value of improvement enabled by condemnation.

[N.H.] The commission held that construction of a telephone company's remote switching facility on a parcel of land surrounded by land owned by persons with the right to enforce a covenant against such development enhanced the value of those surrounding lands to the extent that those property owners' rights could be taken without further compensation. p. 21.

APPEARANCES: For Continental Telephone Company of New Hampshire, Thomas C. Platt III, Esquire; for the State of New Hampshire Public Utilities Commission Staff, Edward J. Schmidt and Mary C. Hain, Esquire.

By the COMMISSION:

REPORT

I. PROCEDURAL HISTORY

This action was initiated on October 16, 1986 by a petition of Continental Telephone Company of New Hampshire, Inc. (hereinafter the Company or Contel) to condemn certain restrictive covenants pertaining to the use of a parcel of land owned by Laura Mae Johnson and Ray Gardner Johnson in Deering, New Hampshire. Contel proposes to construct a concrete utility building on the parcel to house telephone switching equipment.

On December 4, 1986 an Order of Notice was published on this matter in The Messenger, a paper having general circulation in that portion of the state in which the parcel is located. An attested copy of the Order of Notice was also mailed to the last known address, by registered mail, with personal return receipt requested to all persons with said restrictive covenants in their deed and to any additional abutters as defined by N.H. Rev. Stat. Ann. §672:3 (1984).

The Order of Notice identified the lot in question by description, location, and owner. It set a hearing for December 17, 1986. The Notice stated that the issues to be decided at the hearing were: The necessity of the condemnation pursuant to, inter alia, N.H. Rev. Stat. Ann. §371:4 (1984) and the compensation to be paid, pursuant to, inter alia, N.H. Rev. Stat. Ann. §371:4-a (1984).

Prepared testimony and exhibits were filed pursuant to N.H. Admin. Code PUC §202.08. None of the property right owners notified filed for intervention in this proceeding. The hearing

on the merits was held on December 17, 1986.

II. BACKGROUND

In their petition, the Company requested a decision on two issues: the necessity for condemnation of certain restrictive covenants which apply to a parcel on which construction is proposed and the amount of compensation to be given to the covenant owners for the loss of this property right. This condemnation is not requested for the proposed construction site, Lot 8-A. The petitioner has an outstanding purchase and sale agreement with the owners, Laura Mae Johnson and Ray Gardner Johnson (the sellers) of Lot 8-A. The deed for this lot is dated August 21, 1981 and is recorded in the Hillsborough County Registry of Deeds at Book 2871, Page 298. The sellers have agreed to waive the right to enforce the covenant which they will retain by virtue of their ownership of Lot 8 and due to their privity of contract with respect to Lot 8-A. Lot 8-A is part of a subdivision

in which all of the lots are subject to a restrictive covenant.

The above mentioned restrictive covenants are title restrictions contained in the deeds to Lots 1-16, F, H, K, and L, and to a private roadway, which are located in the same subdivision as Lot 8-A. The identical restrictions apply to Lots A-E, G, I and J of an adjacent subdivision. The petitioner questions the enforcement rights of the adjacent subdivision lot owners pertaining to the proposed facility, but because the record title is not dispositive in this regard, the petitioner asks us to condemn whatever rights they may have in Lot 8-A.

The petitioner mailed a waiver form and an explanatory cover letter to all of the above mentioned lot owners. The waiver form was intended to act as consent to the relinquishment of the Use Restrictions and of the Separate Lot Restriction, respectively. Only three of the lot owners signed and returned these waiver forms.

The restrictive covenant states that "... no commercial activity shall be permitted...." on the lots. There is also a town zoning ordinance which does not allow commercial activity on Lot 8-A. In addition, the zoning ordinance does not allow the lot size that the company has proposed (Lot 8-A). The town has a historic district encompassing the area within one-quarter mile of the Deering village. The proposed site was selected in an area outside the historic district ...

III. POSITIONS OF THE PARTIES

A. Necessity

The Company argued that the proposed construction was the best use of the property. It stated that the location of the two streams on the parcel made the property unsuitable for residential use. Witness Duggan stated that the proposed lot would not support a septic system.

Contel submitted evidence that this construction is necessary to provide adequate telephone service to the subdivision and surrounding area. A company witness testified that the company estimates that 237 customers will be added to their network in this serving area in the next three years. Its existing facilities are not adequate to serve these customers. The Company stated further that it is currently unable to provide some four-party customers with private line service.

The Company compared possible technologies which could be used to fill these service requirements. It considered the economics of supplying this service out of the central office, using T Carrier, and utilizing a remote switch. T Carrier was not chosen for three reasons: The cable facility cost would be more expensive than with a remote switch, the Company would need to build a large building, and the Company questioned whether there would be enough room in the central office for the T Carrier related equipment. A remote switch was advocated over supplying the service out of the central office because it would be more costly to extend each customer's loop to the central office (which is five miles from the predicted growth area) than to provide service using a remote switch located at the proposed site.

The parcel in question was chosen because of its proximity to the serving area which lies primarily west and southwest of the Village of Deering. In addition, the Company has obtained a purchase and sale agreement so condemnation of the site will not be needed. Alternative sites within the village were not selected because such sites would be within the area identified by the Town as a historic district, were not for sale or were more costly than the proposed lot.

Staff questioned whether a lot one mile west of the proposed site would be sufficient to provide the service. Contel stated that it would suffice but that it would be more costly since the additional cable necessary would cost $20,000 per mile (subject to size and gauge considerations) and that the property one mile west of Lot 8-A is prime development land so it would be more expensive and might require condemnation. Further, the land would be subject

to the same zoning restrictions against commercial development and size. The Company did not provide documentation of whether the same restrictive covenants were applicable to this land.

The Company described efforts to purchase other land in the vicinity including a nearby parcel owned by Reverend Daniel K. Poling. However, the land is subject to current use taxation. If the owner were to change the current use of part of this property from open space by transferring it to the Company, he would trigger a land use change tax under N.H. Rev. Stat. Ann. §79-A:7 (1986) of 10 percent of the full value to be determined without regard to the open space assessed value. Id. at I. This tax is in addition to the annual real estate tax and is due upon the change in land use.

B. Value

Contel was the only party that produced a witness on the issue of valuation of the restrictive covenants for proposed condemnation. The witness, Lawrence E. Duggan, a real estate appraiser familiar with the area in question, expressed the opinion that the loss of the right to enforce the covenant against this use of the particular lot did not have any value. He estimated further that the property values of the restrictive covenant holders would be enhanced due to the availability of private line telephone service.

The appraiser stated that, in his opinion, the condemnation of the property right with respect to this lot and this construction would not release the general restrictive covenant against commercial use as applicable to the subdivision. Staff asked whether other commercial uses

were developing which were changing the residential character of the subdivision. The witness stated that there were no other commercial uses in the subdivision, but noted the presence of a Quonset hut and attached building used by the Deering Ski Mobile Association on a lot adjacent to the subdivision.

IV. COMMISSION ANALYSIS

A. Necessity

[1] This Commission has the authority, whenever it is necessary for a public utility to adequately provide service, to condemn property rights which are necessary for plant construction. N.H. Rev. Stat. Ann. §371:1 (1984). The Company has adequately proven the need for a facility to provide service. This was shown by the existence of the four-party line customers which have single line service requests which can not be provided by Contel and the projection of future telephone service requests. The need to utilize this particular plot of land is shown by the relative diseconomies of the other technologies and the extra expense which would be incurred by locating the remote switch at alternate locations. There being no record evidence contradicting the company's analysis, the Commission finds that the condemnation of the restrictive covenants in the subdivision and adjacent subdivision lots is needed to allow Contel to provide adequate service to its customers in the general area of the proposed site.

B. Value

[2] Where a public utility cannot agree with the owners of a right as to the necessity or the price to be paid for the right, the Commission is empowered to make such determination. N.H. Rev. Stat. Ann. §371:1 (1984).

Adequate legal notice was given to the parties under N.H. Rev. Stat. Ann. §371:4. Each of the property owners within the subdivision and those in the adjacent subdivision were notified of the hearing on the merits by certified mail, return receipt requested. In addition, notice was made by publication in The Messenger, a newspaper of local circulation. This additional notice was not required under N.H. Rev. Stat. Ann. §371:5 to notify property right owners, since all of these owners were known.

Since there was adequate notice to the parties, and because none of these parties made an appearance or testified as to the need for the taking or the valuation of the property right, the Commission's decision on these issues has to be based on record evidence which consists of the testimony of the Company witness and the crossexamination conducted by the Staff. All relevant and probative evidence of value was taken into consideration in determining the compensation for the rights to be taken. N.H. Rev. Stat. Ann. §371:4-a.

Under N.H. Rev. Stat. Ann. §371:5-b where the proceeding involves a partial taking, the Commission must consider the value of the property before and after the taking. The Company submitted unrebutted evidence that the restrictive covenant rights proposed to be taken had no value under the circumstances and that the addition of the single line service which the commercial use would facilitate would actually enhance the value of the respective properties. For the above reasons, the Commission finds that the properties in question will be more

valuable after the taking than before. Therefore, no compensation shall be necessary for the taking of these property rights.

The Company argued that the cost of an alternative site would be effected by the imposition of a land use change tax. This is not correct. Under the provisions of N.H. Rev. Stat. Ann. §79-A:7 VI (1986) the land use change tax is not assessed and the land is not considered changed when the land is taken by "eminent domain or any other type of governmental taking ...."

Adequate proof exists on the record to show that the Staff proposed one mile west site would be more expensive to develop. Therefore, the site proposed by the Company is necessary. In addition, the proposed site is preferred since it is not within the historic district and because the Company has already obtained a variance of the portion of the zoning ordinance which limits the size and the use of Lot 8-A.

The Commission would like to stress that the valuation given to these covenants should be the exception and not the rule in future cases. There is rarely a taking that does not have some value. The circumstances of this case, however, show that whatever value is attributable to the taking is de minimus, which legally equates to no value whatever. Cro. Eliz. 353.

Our Order will issue accordingly.

ORDER

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

ORDERED, that Continental Telephone Company of New Hampshire, Inc. (hereinafter Contel) will take by eminent domain the property right embodied in the restrictive covenants against commercial use contained in the deeds to Lots 1-16, F, H, K, & L, the private roadway in the subdivision and it shall take by eminent domain the property right embodied in the restrictive covenant against commercial use contained in the deeds to Lots A-E, G, I and J of the subdivision adjacent to the subdivision containing Lot 8-A, said Lot 8-A being that Lot which is a subdivision of Lot 8 which is recorded in Book 2871, Page 298 of the Hillsborough County Registry of Deeds, described as "... Lot #8, containing 6.56 acres, as shown on `Plan of Lots in Deering, New Hampshire, owned by Laura M. Johnson, R.F.D. #1, Box 164, Hillsborough, New Hampshire 03244, Scale 1" = 50; June 1979, Revised July 31, 1979, Donald R. Mellen, Surveyor, Hillsborough, N.H.' said plan being recorded in the Hillsborough County Registry of Deeds as Plan #12,514 ...." solely for the purposes of this remote switching construction project, that is to say the restrictive covenant right owners will still maintain the ability to apply these covenants against each other and against this property with respect to future and commercial uses and; it is

FURTHER ORDERED, that Contel shall file a certified copy of the petition for condemnation and this Report and Order in the Registry of Deeds in the County of Hillsborough, State of New Hampshire.

By Order of the Public Utilities Commission of New Hampshire this twelfth day of January, 1987.

72 NH PUC 23

Re Southern New Hampshire Water Company

DE 86-279
Order No. 18,542

New Hampshire Public Utilities Commission

January 21, 1987

ORDER nisi authorizing a water utility to extend its service area.

SERVICE, § 210 — Extension — Water — New territory.

[N.H.] A water utility was granted authority to extend its mains and service into an area outside its then existing service area; no other water utility had a franchise right in the area sought, and the utility had agreed that the new area would be served under its regularly filed tariff.

By the COMMISSION:

ORDER

WHEREAS, Southern New Hampshire Water Company, a water public utility operating under the jurisdiction of this Commission, by a petition filed October 21, 1986, seeks authority under RSA 374:22 and 26, to further extend its franchise in the Town of Windham; 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 file comments and/or request an opportunity to be heard on the petition; it is hereby

ORDERED, NISI, that Southern New Hampshire Water Company be authorized pursuant to RSA 374:22 to extend its franchise in the Town of Windham in the area presently served by the Shady Brook Water Company as shown on a map on file in the Commission offices; and it is

FURTHER ORDERED, that all persons interested in providing comments or requesting an opportunity to be heard shall do so no later than 20 days after the date of this Order; and it is

FURTHER ORDERED, that Southern New Hampshire Water Company notify the public by publication of an attested copy of this Order once in a newspaper having general circulation in that portion of the State in which service will be provided, such publication to be no later than 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 such authority shall be effective on 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 twenty-first day of January, 1987.

==========

NH.PUC*01/21/87*[60266]*72 NH PUC 24*Shady Brook Water System

[Go to End of 60266]

72 NH PUC 24

Re Shady Brook Water System

DE 83-197
Supplemental Order No. 18,544
New Hampshire Public Utilities Commission
January 21, 1987

ORDER announcing the conveyance of property needed to satisfy the approved extension of a water company's franchise.

PROCEDURE, § 29 — Disposal of issues — Establishment of facts — Closing of docket.

[N.H.] The docket regarding the commission's approval of a water company's request for authority to extend its franchise to include a certain parcel of land was closed as soon as facts demonstrating such acquisition were established.

By the COMMISSION:

SUPPLEMENTAL ORDER

WHEREAS, on March 9, 1984, the Commission issued Report and Order No. 16,934 (69 NH PUC 167) in which it found that Gary Armstrong was the operator and manager of Shady Brook Water System (Shady Brook) in Salem, New Hampshire, and therefore was a public utility pursuant to RSA 362:2; and

WHEREAS, in Order No. 16,934, the Commission ordered Gary Armstrong to file a petition

for a franchise to operate Shady Brook and to file a tariff of rates and charges as required by RSA 378:1; and

WHEREAS, Gary Armstrong thereafter entered into negotiations with Southern New Hampshire Water Company (Southern) regarding the transfer of his rights in Shady Brook to Southern; and

WHEREAS, Gary Armstrong reached an agreement with Southern whereby Southern agreed to assume responsibility for Shady Brook's operations contingent upon its obtaining title to a parcel of land on which Shady Brook's well is located, more particularly described as follows:

Beginning on the easterly side of Patricia Street at the northwest corner of Lot No. 20; thence No. 11 30' W. by said street 50 feet, thence N. 78.30' E. by Lot No. 21, 153.33 feet; thence S 13 42' W. by Lot No. 22, 55.26 feet; thence S 78 30 W. by Lot No. 20, 129.8 feet to the point of beginning.

Being an unnumbered lot, containing 7,078 square feet of land more or less, marked "Area for Central Water Supply" as shown on a plan of Shady Brook Park #2, made by Robert W. Thorndike, Surveyor, revised March 1965, filed in Rockingham County Record of Plans of March 17, 1965.

and

WHEREAS, said parcel was previously owned by a trust, the beneficiaries of which are the customers served by Shady Brook's system; and

WHEREAS, as of August 21, 1986 all customers had conveyed their interest in the subject parcel to Southern with the exception of Patrick J. and Marielena Riviezzo who refused to do so; and

WHEREAS, on August 21, 1986, Gary Armstrong filed a petition to condemn the interests of Patrick J. and Marielena Riviezzo in the above-described parcel pursuant to RSA 371 to enable him to complete the transfer of the water system to Southern; and

WHEREAS, by an Order of Notice issued on September 7, 1986, the Commission consolidated the condemnation petition in this docket and scheduled a prehearing conference for November 13, 1986; and

WHEREAS, during the prehearing conference Patrick J. and Marielena Riviezzo agreed to convey their interests in the subject parcel to Southern; and

WHEREAS, by quitclaim deed dated December 3, 1986 and recorded in the

Hillsborough County Registry of Deeds on December 8, 1986, Patrick J. and Marielena Riviezzo conveyed their interests in the subject property to Southern; and

WHEREAS, on January 21, 1987 the Commission issued Order No. 18,542 approving Southern's request for authority to extend its franchise to include Shady Brook; it is hereby

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

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

January, 1987.

==========

NH.PUC*01/22/87*[60267]*72 NH PUC 25*New Hampshire Electric Cooperative, Inc.

[Go to End of 60267]

72 NH PUC 25

Re New Hampshire Electric Cooperative, Inc.

DE 86-195
Order No. 18,543

New Hampshire Public Utilities Commission

January 22, 1987

ORDER authorizing electric cooperative to install and maintain a distribution line across state waters and railroad property.

---

1. ELECTRICITY, § 7 — Authorization for transmission lines — Water crossings — Safety requirements.

[N.H.] Where the proposed water crossing of an electric power distribution line was in compliance with all clearance safety requirements, and the site was determined to be the most reasonable site, the commission approved the crossing as necessary to meet the reasonable requirements of service to the public. p. 28.

2. ELECTRICITY, § 7 — Authorization for transmission lines — Railroad crossings — Clearance requirements compensation.

[N.H.] When the requirements of vertical clearance, horizontal clearance and adequate compensation were met, the commission granted approval for an electric power distribution line to cross railroad property. p. 28.

APPEARANCES: for the petitioner, Jeffrey Zellers, Esquire, and Earl Hansen, Plant Manager, for the New Hampshire Electric Cooperative, Inc.; Millie Hansen, pro se; Representative Dana Christy; Normandin, Cheney & O'Neil by James Lafrance, Esquire for Mrs. Marie Brailey; John O'Keefe, Esquire, for the Boston & Maine Railroad; Walter King, Administrator, Bureau of Rail Safety, NHDOT; Martin C. Rothfelder, Esquire, Arthur C. Johnson, Electrical Engineer, Dean Mattice, Director of Consumer Assistance, for Commission Staff.

By the COMMISSION:

REPORT

1. PROCEDURAL HISTORY

On June 23, 1986, the New Hampshire Electric Cooperative, Inc. (NHEC) filed with this Commission a petition pursuant to N.H. Rev. Stat. Ann. § 371:1 (1984) requesting the necessary authority for an easement to secure and maintain a power line across the property owned by Marie Brailey in the Town of Grafton, New Hampshire. The purpose of this petition is an attempt by the Company to honor the applications for service from two customers, Mr. Joseph Hill and Mrs. Herluf Hansen, who are located on the opposite side of the Brailey property from the existing power line. Having failed to obtain the required easement by negotiation with Brailey, NHEC is now seeking condemnation. On July 3, 1986, NHEC filed an amended petition, which in conjunction with the first petition additionally requests (1) that the Commission grant a license to construct and maintain a power line over the public waters of Tewksbury Pond pursuant to N. H. Rev. Stat. Ann. §

371:17 (1984), and (2) approval to construct a power line and to establish an easement over the property of the Boston & Maine Railroad (B & M) located in Grafton, N.H., pursuant to N. H. Rev. Stat. Ann § 371:24 (1984). The amended petition was submitted at the request of Commission staff so that all necessary issues concerning the proposed line could be addressed at the same time.

On July 16, 1986, an Order of Notice was issued setting a hearing for November 5, 1986, at 10:00 a.m. before this Commission at its office in Concord. On August 4, 1986, the NHEC filed certification that publication had been made in the Union Leader on July 30, 1986, in accordance with terms of the Notice. Service was made on all parties of interest. On November 3, 1986, James Lafrance, as counsel for Marie Brailey, filed correspondence enclosing a Motion to Dismiss and a Motion to Continue.

The hearing was held as scheduled on November 5, 1986. The proceedings re- quired two days to complete, and the second day of the hearing was held on November 24, 1986.

At the hearing, in defense of his Motion to Dismiss, Attorney Lafrance expressed the concern and problem that the petition as submitted by NHEC did not provide information required by N. H. Rev. Stat. Ann. § 371:1 in that it contained insufficient information regarding just compensation; the description of property sought; how the proposal would effect the property in question; whether the easement sought is temporary or permanent; and other facts relative to the validity of the NHEC request. Moreover, Mrs. Brailey's counsel argued that the present petition did not provide an adequate basis upon which to make an appraisal of value.

With regard to the Motion to Continue, Lafrance testified that Brailey had not received the petition in a timely manner, and as in his Motion to Dismiss, that the petition lacked the above-mentioned information.

In response to these motions and also to Representative Christy's statement that, if at all possible, something should be done to expedite obtaining service, the Commission decided to grant the Motion to Continue. A new hearing date was set for November 24 at 10:00 a.m.

On November 24, 1986, the proceedings continued as scheduled. After a review by the interested parties of a 1914 railroad map and Mrs. Brailey's deed, it was determined that the

property needed for the power line easement ran within the railroad right-of-way and did not involve Mrs. Brailey's property. In summarizing the positions of the parties, Attorney Zellers related that Mrs. Brailey and her counsel would not contest the proceeding in as much as her property was no longer under consideration for condemnation. However, they did request that the NHEC consider reimbursing Mrs. Brailey for the expenses incurred in this proceeding. These costs were estimated at $750. The NHEC offered to take this request under consideration. The Counsel for NHEC then proceeded to amend their petition to exclude the request for authority to condemn the land of Mrs. Brailey.

Attention now turns to the two remaining issues: authority to cross the track owned by the Boston & Maine Railroad; and authority to cross public waters of Tewksbury Pond.

Mr. Earl Hansen, Plant Manager, NHEC, testified that there are three options available to the company to provide service to the two customers. The first route investigated and rejected is along the side of a narrow, dirt road coming from Route 4 which serves as a right-of-way to a town boat launching area on Tewksbury Pond. Because of the large amount of tree cutting, Dr. Salvador Morando, the person who owns the property on either side of this road, will not grant an easement. Moreover, due to the 1200 to 1300 foot distance, the service would come under the company's line extension policy requiring additional expense for the new customers. Mr. Hansen also offered that it would be more difficult to maintain than the other options due to the trees. A second option which is also rejected by the Company

would take the power line close to Mrs. Brailey's house. The 400 foot line through her property would require condemnation. The route has additional concerns in that a pole would have to be installed in ledge, and the line itself maintained over a swamp and the pond. In regard to constructing near water, Mr. Hansen presented that the use of submarine cable was briefly considered, but only as a possibility. Due to its cost and possible environmental impact, the company does not consider it a viable alternative to overhead construction.

The favored route proposed by the company would run approximately 445 feet and require setting two distribution line poles. This route would also require an overhead guy across Route 4 to support pole 7H/13, the take off pole. The company testified that it has received the approval of the property owner across Route 4 to set the anchors for the overhead guy. This power line would cross over the railroad track and Tewksbury Pond. Mr. Hansen testified that the vertical clearance over the track and pond would be a minimum of 35 feet to allow room for future telephone service and still maintain the required 28 foot code clearance for this 14,400 volt line.

In the original staking plans, NHEC proposed to place one of the new poles approximately 12.5 feet from the center line of the track. This did not meet the Boston & Maine's standard of a 25 foot clearance. The B & M indicated a desire to have the pole location at least 18 feet from the track, as a compromise. The NHEC agrees to relocate the subject pole, as testified by Mr. Hansen, to satisfy the concerns of the B & M. A revised pole location diagram will be submitted later for completeness.

In regard to compensation for permits, licenses and company expense, Mr. Hansen advised that the customers have agreed to pay whatever charges are necessary to obtain electric service.

He explained that under the company's tariff it is the obligation of the customer to obtain all easements and licenses for service. Administrative notice was asked to be taken of NHEC Tariff No. 13, page 10 through 13, Section 15 and 19. This tariff specifies that a customer requesting service will provide at no cost, any necessary right-of-ways to the company. The company takes the position that while Mr. Hill and Mrs. Hansen are relying on the company to pursue their request for power, the company will be reimbursed for expenses in accordance with the tariff.

Relative to compensation for easements to cross over state waters and railroad property, it is the company's position that there has never been a requirement to provide compensation for a water crossing license. However, there is an established practice of compensation for a license for crossing over railroad property. Mr. Hansen testified that in Commission Docket DE 84-92, a license fee for crossing over a railroad was set by the Commission. In that particular hearing, the cost was determined by evidence presented by a state railroad representative, where a breakdown of mainly administrative and engineering costs were offered. Because the fee as determined in DE 84-92 was derived through an extensive hearing, the company has attempted to use it as a standard compensation amount since 1984.

The Commission, in Docket DE 84-92, stated that the petitioner in said docket was required to pay for a similar license an amount to be calculated by one of the following methods:

a. Initial administrative cost $270.00. Annual administrative charge $27.00.

b. One-time administrative charge $540.00.[1(3)]

Furthermore, inasmuch as license fee costs are passed directly through to the customer, and a compensation figure had been derived in a previous docket, the NHEC objects to the B & M's proposed charge of $1500.

The B & M witness, Mr. John Brennan, Manager of Contract Agreements, testified in support of their proposed charge of $1500 for the permanent easement. Mr. Brennan offered his opinion that the $1500

Page 27

was a fair and reasonable charge. He explained that the figure is based upon a number of factors, but mainly, upon the reasonable value of the land, engineering costs, overhead costs, legal time, and negotiating costs. The parties were unable to negotiate a compensation agreement prior to this hearing.

II. FINDINGS

In NHEC's original petition, the Commission was faced with three issues. The first issue dealt with eminent domain under N. H. Rev. Stat. Ann. § 371:1, the second with the license to construct and maintain a power line over public waters pursuant to N. H. Rev. Stat. Ann. § 371:17, and the third requested an easement to traverse the property of the B & M Railroad in accordance with N. H. Rev. Stat. Ann. § 371:24.

During the proceedings, the concerned parties determined that the proposed distribution line would not cross or involve the private property of Mrs. Brailey. Accordingly, she withdrew from further participation. The question of eminent domain was accordingly withdrawn and need not

be decided.

The two parties requesting service are within the franchise area of the NHEC, and the electric company is obligated to provide the requested power. Therefore the requested service is just and reasonable. After consideration of the alternative routes to supply this service, the Commission agrees that the NHEC proposal is the most reasonable option. The approved route is indicated on page 2 of 3 in Exhibit No. 1. This exhibit further indicates that the line crosses over Tewksbury Pond and the B & M railroad track.

[1] No one appeared in opposition to the crossing of the public waters of Tewksbury Pond. Regarding water crossings, the primary Commission concern is one of safety, mainly in providing adequate clearances. In this instance, the company has testified to meeting the clearance requirements of the National Electrical Safety Code (NESC) in keeping with the PUC Rules and Regulations. N. H. Admin. Code § 306.01. In our review we find no unnecessary risk or inconvenience to the public by the proposed route of crossing over Tewksbury Pond. Since this site is the most reasonable site, we find the crossing is necessary to meet the reasonable requirements of service to the public.

[2] The railroad crossing issue involves three elements: vertical clearance, horizontal clearance and compensation. By designing the power line to meet the vertical clearance requirements of the NESC as the NHEC testified to, the concerns of the Commission and of the B & M are met. The obligations to the B & M have also been adequately addressed regarding horizontal clearances, by placing the pole (7H/13A) no closer than 20 feet from the track center line. As requested by staff, the NHEC has submitted under a cover letter dated December 12, 1986, a revised drawing indicating the relocation of its pole to be no less than 20 feet from track center line.

Now turning to the issue of just compensation for a permanent easement to cross over the railroad property, the Commission concludes that the testimony lacks the evidentiary foundation to support the charge of $1500. The major concerns of the Commission stem from the absence of data and supporting documentation on which to base an evaluation. In lieu of this, the Commission adopts the compensation standard approved in DE 84-92. Furthermore, as a practical matter to reduce administrative costs, we find in favor of a onetime administrative charge of $540 to be a just and reasonable charge for the proposed easement.

As the petition of NHEC is found to be in the public interest, this Report and Order shall constitute a license in the context of RSA 371:17 and approval and easement in accordance with RSA 371:24.

Our order will issue accordingly.

ORDER

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

ORDERED, that the New Hampshire Electric Cooperative, Inc. is authorized to install and maintain a distribution line across state waters of Tewksbury Pond and across the property of the Boston and Maine Railroad, to provide service to new customers, all in Grafton, New

Hampshire; and it is

FURTHER ORDERED, that this order shall be considered a license for purposes of RSA 371:17, and it is

FURTHER ORDERED, that NHEC pay a one-time payment of five hundred and forty dollars to the Boston & Maine Railroad for the permanent easement; and it is

FURTHER ORDERED, that this order shall be considered approval for the NHEC to construct a line and establish a permanent easement pursuant to RSA 371:24,

By order of the Public Utilities Commission of New Hampshire this twenty-second day of January, 1987.

FOOTNOTES

[1]DE 84-92, Order No: 17,065 (June 5, 1984) at 10 (69 NH PUC 301). Note that there is a typographical error in the Order itself. Whereas the charge of $570.00 should be $540.00 as in the Report.

==========

NH.PUC*01/22/87*[60282]*72 NH PUC 29*Public Service Company of New Hampshire v. Irene T. Vozzella

[Go to End of 60282]

72 NH PUC 29

Public Service Company of New Hampshire
v.
Irene T. Vozzella

DE 86-220
Order No. 18,545

New Hampshire Public Utilities Commission

January 22, 1987

ORDER granting petition to condemn certain property rights for the extension of a transmission power line.

---

1. EMINENT DOMAIN, § 9 — Procedure — Petition to condemn property rights — Public necessity — Commission determination.

[N.H.] A petition to condemn certain property rights of an individual was granted where the commission determined that the proposed transmission line route was necessary in order to meet the reasonable requirements of service to the public. p. 32.

2. EMINENT DOMAIN, § 8 — Compensation — Amount to be just and reasonable — Estimate

by real-estate appraiser.

[N.H.] When the estimated amount of compensation to be paged for condemnation of certain property rights is made by a real-estate appraiser, the commission will conclude that the amount is just and reasonable unless the opposing landowner has proven otherwise. p. 32.

APPEARANCES: Eaton W. Tarbell, Esquire for Public Service Company of New Hampshire; Martin R. Jenkins, Esquire for Irene T. Vozzella; Martin C. Rothfelder, General Counsel for the New Hampshire Public Utilities Commission.

By the COMMISSION:

REPORT

Page 29

This docket was opened on July 28, 1986 by petition of the Public Service Company of New Hampshire (PSNH) for condemnation pursuant to RSA Chapter 371 of certain rights in real estate located in the Town of South Hampton, New Hampshire owned by Irene T. Vozzella of 139 Locksley Road, Lynnfield, Massachusetts. In its petition, PSNH said that the purpose of the proposed taking is to acquire a perpetual right and easement to:

construct, repair, rebuild, operate, patrol and remove overhead and underground lines consisting of wires, cables, ducts, manholes, poles and towers together with foundations, crossarms, braces, anchors, guys, grounds and other equipment for transmitting electric current and/or intelligence over, under and across a certain one hundred seventy (170) foot wide tract or strip of land in the Town of South Hampton ... the center line of which is described in Exhibit A attached hereto and made a part hereof.[1(4)]

PSNH also requested the right to clear and keep clear the land of all trees and underbrush as well as certain other rights enumerated in the petition relating to the construction and maintenance of the proposed transmission line.

The transmission line will run for a distance of approximately 3,408 feet along the center line over the Vozzella property which will cover a right-of-way of approximately 13.8 acres. The property consists of a 165 acre parcel improved with an old farmhouse and appurtenant structures with approximately 850 feet of frontage on the north side of Main Avenue in South Hampton. The tract runs back from the road about 6,400 feet. Approximately 800 feet from Main Avenue the land slopes downward to a ten acre strip of wet lowland. The rear 5,000 feet is densely wooded.

This is the last remaining piece needed by PSNH to complete the Seabrook, New Hampshire to Tewksbury, Massachusetts transmission line. Easements for the remaining portions of the line have been secured through voluntary negotiation with the various landowners.

PSNH received a certificate of site and facility on January 29, 1972, pursuant to RSA 162-F, for the construction of the Seabrook nuclear electric generating facility and associated facilities, including the SeabrookTewksbury transmission line.[2(5)]

The certificate of site and facility provided, in pertinent part (59 NH PUC 127 at 132, 133):

While the associated transmission lines will be authorized along the routes set forth in Exhibit 53A, we fully realize the possibility of refinement of these locations as field work progresses with the actual layout of these routes. This approval may be modified, upon request, by the Petitioner should meaningful negotiation with responsible local authorities, regional Commissions, etc. result in any beneficial route relocations.[3(6)]

The certificate of site and facility, when issued, is final, subject only to judicial review. RSA 162-F:8IV; Re Society for the Protection of the Environment of Southeastern New Hampshire, 122 N.H. 703, 705 (1982). However, because of the specific provisions of the certificate of site and facility quoted above, some minor modifications to the proposed route can be made if appropriate.

In 1976, the location of the transmission lines was changed by the U.S. Nuclear Regulatory Commission (NRC) in several instances during federal proceedings. The Site Evaluation Committee, in 1979, approved modifications, on petition of PSNH, in the transmission line route, including the above mentioned changes ordered by the NRC and changes to accommodate landowners. 122 N.H. at 706. In 1981, the PUC denied a PSNH request for further modifications to the east-west transmission line layout in Kensington, New Hampshire. The PUC was upheld in this decision by the New Hampshire Supreme Court in the above cited Re

Society for Protection of Environment of Southeast New Hampshire, 122 N.H. 703 (1982).

The portion of the Seabrook-Tewksbury transmission line at issue in the proceeding now before us, across the Vozzella property, was approved in these earlier proceedings. It is the last portion of the proposed transmission line for which the necessary easements have not been secured. Determination of this issue was deferred at the request of the parties to allow them an opportunity to amicably resolve their differences. The negotiations were not fruitful and, by petition by PSNH dated July 28, 1986, the matter was again brought before this Commission.

The issues before us are twofold. We must first "determine the necessity for the right prayed for" and then the "compensation to be payed therefor."[4(7)]

I. POSITION OF THE PARTIES

A. Public Service Company of New Hampshire

PSNH presented two witnesses, Michael Cannata on the issue of necessity and David F. Colt, a real-estate appraiser, who testified on the issue of value. A third witness, David Mahan, Senior Real Estate Agent for PSNH, also testified briefly on the location of a nearby existing transmission line.

Mr. Cannata, Director of the System Planning-Energy Management Department of PSNH, testified that the proposed line is necessary to integrate Seabrook into the existing transmission system and that this issue of necessity has already been established in the above cited NRC, Site Evaluation Committee and New Hampshire Public Utilities Commission proceedings. Exh. 3 at 4. He further testified that no other alternative is as economical or supplies the benefits of the

proposed system, including the ability to supply an additional source of power for the northeastern portion of Massachusetts. Id. The line would enhance the transfer capability from northern New England to southern New England allowing, among other things, greater imports of Canadian power. In fact, Mr. Cannata indicated that because the New England transmission system now has been designed to include this line that it is necessary for north-south transmission whether Seabrook operates or not.

In his opinion, the proposed route across the Vozzella property is the best alternative for the following reasons:

1. The proposed route has already been approved by the required federal and state authorities.

2. The connecting easements on each side of the Vozzella property have already been secured.

3. Routing the line around the edge of the Vozzella property rather than through the proposed central portion would involve additional significant costs and would effect neighboring properties in a way which are not now directly involved in the line's route.

4. Alteration of the route would result in a delay of the in service date of the line.

5. The proposed route minimizes the aesthetic impact on the area.

The PSNH position regarding evaluation was presented by David F. Colt, MAI. Mr. Colt testified that the value of the Vozzella property before the proposed taking is $500,000 whereas said property would be valued after the taking at $460,600 resulting in compensable damages in the amount of $39,400. See, inter alia, Exh. 9 and Tr. 43, 50-88

B. Vozzella

Mrs. Vozzella contested both the necessity for the acquisition and the amount of compensation that should be payed therefore. Regarding necessity, she argued that the line is not needed because of the current licensing problems being encountered

Page 31

by PSNH. Alternatively, Mrs. Vozzella argued that in the event that the Commission found that the proposed power line is necessary, it should run along the eastern boundary of her property rather than through its central portion as proposed. Her attorney argued that the prior decisions by this Commission and by the Site Evaluation Committee regarding the power line did not establish its necessity nor its specific location thereby preserving said issues for subsequent determination in proceedings such as those now before us.

Regarding compensation, Mrs. Vozzella testified that the power line would substantially diminish the potential for development of the parcel, thereby lowering its value from $1,000,000 to $300,000, indicating that just compensation should be the difference between the two values, or $700,000.

II. Commission Analysis

Condemnation proceedings before this Commission are governed by RSA Chapter 371.

Pursuant to RSA 371:4, we must determine the necessity for the right prayed for and the compensation to be payed therefor.

[1] The issue of necessity need not be discussed at length here in that we find that the necessity for the project was previously addressed by this Commission, in conjunction with the Site Evaluation Committee and the Nuclear Regulatory Commission, in the above referenced proceedings. The certificate of site and facility issued to PSNH pursuant to RSA 162-F in Docket No. DSF 6205 included the subject Seabrook-Tewksbury transmission line.[5(8)] The proposed line is needed to integrate Seabrook into the NEPOOL grid and is necessary for the north-south flow of power in the region, including projected increases in power from Hydro-Quebec, even in the event that Seabrook does not operate.

The certificate of site and facility provided that the proposed transmission line route may be modified, upon request if a route relocation be beneficial.[6(9)]

Accordingly, we can authorize minor changes to the proposed route when such action would be beneficial. Such modifications, proposed by PSNH, were approved in 1979 to reflect changes ordered by the NRC as well as changes to accommodate landowners. 122 N.H. at 706. In 1981, the PUC denied a PSNH request for more substantial modifications to the transmission line routing.[7(10)]

In the case at bar, we find that the proposed route is the most appropriate under the circumstances of this case. The proposed route takes into consideration aesthetics and environmental impacts, among other things. Tr. 13 and 50. The original routing of the line was changed as a result of meetings between PSNH and the town of South Hampton. In an effort to reduce the visual impact of the line, it was rerouted to avoid high ground in the area, and to accommodate the town of South Hampton. Tr. 50. Our view of the area in question corroborated these assertions.

[2] The final issue before us regards compensation. PSNH, using the "before and after" test prescribed in RSA 371:4-a,[8(11)] demonstrated a value for compensation of $39,400. In assessing the property value, Mr. Colt walked the property, inspected the buildings, and conducted a comparative analysis of similarly situated tracts, with adjustments made for the dissimilarities between the properties being compared. This analysis resulted in a property value before the taking of $500,000. In determining the value of the land after the taking, Mr. Colt considered the change in size and the change in how the property could be used after completion of the power line and acquisition of the right-of-way. Tr. 60. Mr. Colt's appraisal gave any benefits of the doubt to the property owner, Mrs. Vozzella. Tr. 57. The figure of $39,400 included the value of the proposed taking plus the severance damage to the remainder of the Vozzella property. Tr. 58. This analysis conforms with the requirements of prior Commission condemnation decisions.[9(12)]

The power line would be hardly noticeable from the area of the house and barn

along Route 107. Tr. 65. Although the power line would to some extent effect the development potential of the interior portions of the Vozzella property, the land would not be developable even without the power line for at least ten years and development would invoke a

substantial tax penalty. Tr. 76-77. Also, some of the affected land is swampy and thus is not easily developable. Mr. Colt discounted the value of the land to allow for these factors in arriving at the $460,600 value after the proposed taking has occurred. The Commission also notes that if the line is moved to the eastward property line of the Vozzella property, it could adversely affect other property owners which would not otherwise be affected by the proposed line.

Mrs. Vozzella asserts that the value of the taking would be $700,000. She argues that the value of the land before the taking is $1,000,000 as opposed to a $300,000 value after the taking. She refused a million offer on the land which she feels should be determinant of the market value of the land before the taking. She stated that after the taking there will only be about one third of the property left that can be developed, diminishing the land's value to about $300,000. She did not offer any expert testimony on the subject of compensation. Tr. 184-187. Furthermore, Mrs. Vozzella admitted that the $1,000,000 offer came from a person who was presumably aware of the proposed power line. The record is thus unclear as to why Mrs. Vozzella believes that the property's value will be diminished by the taking to $300,000.

We must conclude, therefore, that the compensation offered by PSNH in the amount of $39,400 is just and reasonable.

Our order will issue accordingly.

ORDER

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

ORDERED, that the petition filed by Public Service Company of New Hampshire on July 28, 1986 to condemn certain property rights described in said petition of property owned by Irene T. Vozzella as described in said petition, as amended on October 10, 1986; Tr. 5-7; is necessary in order to meet the reasonable requirements of service to the public and is hereby granted and it is

FURTHER ORDERED, that the Public Service Company of New Hampshire pay to Irene T. Vozzella the sum of $39,400 as just and reasonable compensation for the above ordered taking.

By order of the Public Utilities Commission of New Hampshire this twenty-second day of January, 1987.

FOOTNOTES

[1]Petition at 2.

[2]Docket No. DSF 6205, (January 29, 1974) as modified by Order No. 12,215 (April 20, 1976) (61 NH PUC 96) and by Order No. 13,941 (December 13, 1979) (64 NH PUC 417).

[3]DSF 6205, Order No. 11,267 (January 29, 1974), 59 NH PUC 127 at 132, 133.

[4]RSA 371:4.

[5]See footnotes 2 and 3 supra.

[6]Order No. 11,267 (January 29, 1974) in Docket DSF 6205, 59 NH PUC at 132, 133.

[7]Aff'd, Re Society for Protection of Environment of Southeast New Hampshire, 122 N.H. 703 (1982).

[8]Tr. 57.

[9]Re Hampton Water Works Co., 67 NH PUC 680, 681, 682, (1982).

==========

[Go to End of 60302]

72 NH PUC 33

Re Coos Power Corporation

DR 86-238
Second Supplemental Order No. 18,548

New Hampshire Public Utilities Commission

January 22, 1987

MOTION for rehearing by power corporation; denied.

Page 33

PROCEDURE, § 32 — Rehearings — Grounds for denial — Issues already reviewed.

[N.H.] A motion for rehearing by a power company which contained no arguments or issues of fact that had not already been fully reviewed was denied.

By the COMMISSION:

SUPPLEMENTAL ORDER

WHEREAS, 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, Docket No. DE 83-62, Report and Eighth Supplemental Order No. 17,104, 69 NH PUC 352, 61 PUR4th 132 (1984) (DE 83-62) and Re Small Energy Producers and Cogenerators, Docket No. DR 86-134, Report and Order No. 18,334 (July 10, 1986) (71 NH PUC 408); and

WHEREAS, the Commission denied Coos's petition on November 18, 1986 by Order No. 18,483; and

WHEREAS, on December 8, 1986 Coos filed a Motion for Rehearing of Order No. 18,483, which the Commission denied on December 19, 1986 by Order No. 18,513, (71 NH PUC 798)

on the grounds that the long term rates established in DE 83-62 applied only to facilities that were eligible under both state and federal law; and

WHEREAS, on January 8, 1986 Coos filed a Motion for Rehearing of Commission Order No. 18,513 alleging that the Commission has ample basis under Federal Energy Regulatory Commission (FERC) regulations to set long term rates and that a fair reading of the final Order in DE 83-62 leads to the conclusion that the Commission intended to establish rates that would be available to facilities that qualified under either the Public Utilities Regulatory Policies Act of 1978 (PURPA) or the Limited Electrical Energy Producers Act RSA 362-A:4 (LEEPA) given that,

1. The Order defined eligible facilities as "Qualifying Small Power Producers and Qualifying Cogenerators as defined in LEEPA and PURPA" (at 17) rather than "as defined in both LEEPA and PURPA";

2. that Public Service Company of New Hampshire (PSNH) reserved its rights to argue at a later time that eligibility should be defined more narrowly than as defined by the FERC regulations; and

3. that the Commission did not explicitly indicate that it lacked authority under PURPA to set long term rates; and

WHEREAS, as stated in Order No. 18,513 the final Order of DE 83-62 clearly defines eligible facilities as those that qualify under LEEPA and PURPA, not LEEPA or PURPA; and

WHEREAS, the definitional issues PSNH reserved its rights to argue related to FERC regulations concerning FERC minimum size, fuel, efficiency, reliability and ownership standards, which are not addressed by LEEPA, rather than maximum size criteria for which LEEPA and PURPA are in conflict; and

WHEREAS, given the legislative history of LEEPA the Commission did not confront the issue of its authority to set long term rates for projects that do not qualify under LEEPA and therefore did not address that issue in its final order; and

WHEREAS, the Motion for Rehearing contains no fact or argument that had not been fully reviewed prior to the issuance of Order No. 18,513; it is therefore

ORDERED, that the Motion for Rehearing be, and hereby is, denied.

By Order of the New Hampshire Public Utilities Commission this twenty-second day of January, 1987.

==========

NH.PUC*01/22/87*[60311]*72 NH PUC 35*Lakes Region Water Company, Inc.

[Go to End of 60311]

Order No. 18,549

New Hampshire Public Utilities Commission

January 22, 1987

ORDER approving the sale and transfer of water company plant and franchise and granting authority to operate as a public utility in the acquired territory.

CERTIFICATES, § 137 — Transfer of rights — Sale of assets — Water.

[N.H.] A proposed sale of assets and transfer of the franchise of a water company was approved when such action was determined to be in the public good; the existing rates were approved as temporary rates for the acquiring company until a permanent rate filing would be made.

APPEARANCES: Dom S. D'Ambruoso, Esquire, for Lakes Region Water Company, Inc.; Martin C. Rothfelder, Esquire, for the Commission staff.

By the COMMISSION:

REPORT

I. PROCEDURAL HISTORY

By a petition filed on May 27, 1986, Lakes Region Water Company, Inc. (Lakes Region) and the Trustee of the Estate of WVG Associates (the Trustee or WVG) seek authority under RSA 374:22, 26, 28 and 30 for the sale and transfer of certain plant and the franchise granted WVG in docket DE 82-222, Order No. 16,375 (68 NH PUC 308).

In November 1984, Joseph F. Ryan was appointed Trustee of WVG Associates, a debtor in Chapter 11 proceedings in the United States Bankruptcy Court for the District of New Hampshire, and was empowered by the Bankruptcy Code to administer the assets of WVG, which included the water system in Thornton, N.H.

II. COMMISSION ANALYSIS

Testimony by Attorney William R. Baldiga, Counsel for the Trustee, introduced documents and findings by the U.S. Bankruptcy Court that the sale of the assets of the WVG water system to Lakes Region for the sum of $5,000 was proper and in the best interests of the estate of WVG. Counsel for the Trustee further testified that the water system has been kept operating since its appointment as trustee, revenues collected in accordance with the tariff approved by this Commission, and essential expenses paid. If the sale, as here presented, is approved by this Commission, a bill of sale will be executed within 30 days, giving title to the water system to Lakes Region.

Witness Thomas Mason, President of Lakes Region testified that the acquisition of the WVG system is a logical expansion of his growing water company. Lakes Region proposes to adopt the existing tariff rates of WVG as temporary rates until certain plant improvements are made, after

which a permanent rate filing would be made.

III. CONCLUSION

It is our opinion that the proposed sale of certain assets and the transfer of the franchise of WVG Associates to the Lakes Region Water Company would be in the public good and we so rule. We also accept the existing rates of WVG as temporary rates for Lakes Region on this system, to become effective upon completion of the sale and transfer of the water system and the filing of the appropriate tariff supplement.

Our order will issue accordingly.

ORDER

Page 35

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

ORDERED, that Lakes Region Water Company, Inc. be and hereby is, authorized to purchase certain assets of WVG Associates and exercise the franchise granted to WVG Associates in docket DE 82-222, Order No. 16,375 (68 NH PUC 308); and it is

FURTHER ORDERED, that upon completion of the sale and transfer of franchise, the authority granted to WVG Associates to operate as a public utility shall be rescinded; and it is

FURTHER ORDERED, that upon completion of the sale and transfer, Lakes Region Water Company, Inc. shall file a tariff supplement as required by NHCAR PUC 1601.05(m).

By order of the Public Utilities Commission of New Hampshire this twenty-second day of January, 1987.

==========

NH.PUC*01/23/87*[60316]*72 NH PUC 36*Salmon Falls Hydro Company, Inc.

[Go to End of 60316]

72 NH PUC 36

Re Salmon Falls Hydro Company, Inc.

DR 86-247
Supplemental Order No. 18,550

New Hampshire Public Utilities Commission

January 23, 1987

SUPPLEMENTAL order denying a motion for rehearing.

PROCEDURE, § 32 — Rehearing — Grounds for denial — Issues already considered.

[N.H.] A motion for rehearing which contained no facts or arguments not already fully

considered was denied.

By the COMMISSION:

SUPPLEMENTAL ORDER

WHEREAS, on December 11, 1986 by Order No. 18,502 (71 NH PUC 784), the Commission granted Salmon Falls Hydro Co., Inc. (Salmon Falls) an opportunity to petition the Commission pursuant to Re Small Energy Producers and Cogenerators, Docket No. DR 86-134 Report and Order No. 18,334 (July 10, 1986) (DR 86-134) (71 NH PUC 408) 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 by the present owner exceed the non-levelized rates and that without some degree of front-end loading the project will of necessity cease operations; and

WHEREAS, on December 31, 1986 Public Service Company of New Hampshire (PSNH) filed a Motion for Rehearing, alleging

1. that Salmon Falls is an out of state facility and therefore ineligible for rates under DR 86-134;

2. that front-end loading is improper for developed sites as the Commission has no "statutory obligation to prop up uneconomic projects at potential risk to PSNH's customers" and front-end loading was intended to be available in early years of a project and Salmon Falls has been on-line since 1980; and

3. that provision of sufficient front-end loading to retain the project as currently financed in operation is improper if those rates are greater than non-levelized sought by the new owner because the new owner's expenses in later years may exceed the rate, and that it is inequitable to require one Small Power Producer (SPP) to demonstrate need in order to receive front-end loaded rates without requiring all SPP's to demonstrate need; and

WHEREAS, the issue of the eligibility of the Salmon Falls/Rollingsford hydroelectric

project for rates established pursuant to the Limited Electrical Energy Producers Act N.H. RSA 362-A was decided in Re Swans Falls and Rollingsford Hydro Sites, Docket No. IF 14,894 Report and Order No. 13,938 (December 10, 1979), 64 NH PUC 416, and we find nothing in the current docket to disturb those findings; and

WHEREAS, the Commission has previously found that:

... 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. Re Goodrich Falls Hydroelectric Corp., 71 NH PUC 247, 248 (1986).

and we find nothing in the current docket to disturb that finding. Further, whether a project is

economic must be judged over the term of the project and the rate, not in reference to a single year; and

WHEREAS, the new owner sought fully levelized rates, in which the rates of the later years are necessarily lower, not higher, than the non-levelized or partially levelized rates offered under Order No. 18,502. Therefore, the risk that the new owner's expenses in the later years will exceed the rate is diminished rather than increased under the Commission's Order in comparison to the petitioner's request; and

WHEREAS, pursuant to DE 83-62, an Order accepting the settlement agreement among Staff, PSNH and intervenors representing SPP's, SPP's may petition for levelized long term rates with standard terms and conditions subject to ceiling provisions, such terms and conditions remaining in effect until modified in Re Public Service Co. of New Hampshire — Avoided Cost, Docket No. DR 86-41, and the Commission is departing from those provisions only to verify that the instant petition is in keeping not only with the letter but also the intent of DE 83-62; and

WHEREAS, the Motion for Rehearing contains no other fact nor argument that was not fully considered prior to the issuance of Order No. 18,502; it is therefore

ORDERED, that the Motion for Rehearing be, and hereby is, denied; and it is

FURTHER ORDERED, that Salmon Falls may file a non-levelized rare petition or present evidence of need for some degree of front-end loading pursuant to Order No. 18,502 prior to February 23, 1987.

By Order of the New Hampshire Public Utilities Commission this twenty-third day of January, 1987.

==========

NH.PUC*01/26/87*[60323]*72 NH PUC 37*Public Service Company of New Hampshire

[Go to End of 60323]

72 NH PUC 37

Re Public Service Company of New Hampshire

DR 86-41 Order No. 18,552

Re UNITIL Service Company DR 86-69 Order No. 18,552

Re New Hampshire Electric Cooperative, Inc. DR 86-70 Order No. 18,552

Re Granite State Electric Company DR 86-71 Order No. 18,552

Re Connecticut Valley Electric Company, Inc. DR 86-72 Order No. 18,552

New Hampshire Public Utilities Commission

January 26, 1987

ORDER revising testimonial schedules.

PROCEDURE, § 1 — Motions for rescheduling — Filing of testimony.

[N.H.] Where it had been waiting for approval of the retaining of an expert witness, the consumer advocate's motion for an extension of the deadline for filing testimony was granted, as the expert witness testimony was deemed crucial, but in response to the extension and in an effort to allow all parties adequate time to prepare rebuttal, the originally scheduled date for the first day of hearings was transformed into a scheduling meeting, to be used to establish the order of witnesses and issues.

By the COMMISSION:

Report Regarding Prefiled Testimony of Consumer Advocate and Motion Concerning Order of Witnesses

This Report and Order disposes of the motion of the Consumer Advocate filed December 3, 1986 entitled "Motion to Extend Time for Filing Testimony", and the related responses thereto. In addition, this Report and Order disposes of the "Motion Concerning Order of Witness" filed January 12, 1987.

I. Consumer Advocate Testimony

On December 3, 1986, the Consumer Advocate filed a motion entitled Consumer Advocate's Motion to Extend Time for Filing Testimony. That Motion indicated that the Consumer Advocate had entered into a contract to hire an expert witness and was awaiting approval of said contract on December 17, 1986. The Motion specifically requested that the Consumer Advocate be allowed to file testimony on or before January 5, 1987 and, implicitly, that such testimony be considered as filed timely for purposes of this proceeding. On December 4, 1986, Granite State Electric Company (Granite State) filed a letter with the Commission indicating a lack of objection to the Consumer Advocate request so long as sufficient time is allowed for preparation and submission of rebuttal testimony, if necessary. On December 17, 1986, PSNH filed an objection to the Consumer Advocate Motion on the grounds that there would be insufficient opportunity to review and respond to the Consumer Advocate testimony. On December 29, 1986 the Consumer Advocate filed a reply to the objection of PSNH to its motion. In its reply, the Consumer Advocate argues that the PSNH objection is untimely, that the fifteen day response time of PSNH is "amazing", and that PSNH cannot show any prejudice or damage due to the current moratorium on small power producer rates.

The Commission prefers to receive all information possible in proceedings before it — particularly in a proceeding such as this one which involves large important statewide matters. In this circumstance this docket has developed through a series of Commission actions into one of such statewide importance. Thus, it is reasonable that the Consumer Advocate did not pursue a contract with a witness until the time period laid out in its Motion. Since this witness will undoubtedly provide new information and a new perspective, the Commission is naturally

interested in receiving such evidence. Thus, the focus of the inquiry should be on whether such testimony can be allowed in a manner which is fair to other parties.

The Commission notes that since the filing of the Granite State and PSNH responses to the Consumer Advocate's Motion, the hearings for this proceeding have been delayed and, under the disposition of another motion in this Report and Order, is delayed one day yet further. As the Consumer Advocate testimony was filed on January 5, 1987, parties have had time to propound data requests to the Consumer Advocate since then. To the extent the time periods currently laid out are not sufficient for discovery and, if necessary, responsive testimony, the parties should request procedural mechanisms which provide them these opportunities which do not inordinately delay the proceedings. The

Page 38

Commission will consider any reasonable request for such action.

II. Motion Concerning Order of Witnesses

On January 12, 1987, the law firm of Brown, Olson and Wilson, on behalf of its clients in this proceeding filed a motion requesting that the January 16, 1987 date scheduled for this proceeding be used solely for determining an order of witnesses and issues in the proceeding, and to determine the manner in which the settlement agreement will be presented to the Commission. In the cover letter attached to the motion Brown, Olson and Wilson indicate that most of the active parties to this proceeding have no objection to the motion.

The Commission finds that approving the Brown, Olson and Wilson motion will lead to a more orderly and organized proceedings. Considering the quantity of witnesses, the quantity of prefiled testimony, and the complexity of this docket, the Commission believes that the Brown, Olson and Wilson Motion should be granted. In the event parties are not able to agree on procedural matters on January 16, the Commission will be available to hear and decide any procedural disputes.

Our Order will issue accordingly.

ORDER

Upon consideration of the foregoing Report, which is incorporated herein by reference the Commission orders that:

1. the testimony filed by the Consumer Advocate on January 5, 1987 will be accepted as timely filed; and

2. the motion concerning order of witnesses filed January 12, 1987 shall be granted.

By order of the Public Utilities Commission of New Hampshire this twenty-sixth day of January, 1987.

==========

72 NH PUC 39

Re Concord Steam Corporation

DR 85-304
Fourth Supplemental Order No. 18,553
New Hampshire Public Utilities Commission
January 28, 1987

MOTION for reconsideration of an order disallowing recovery of royalty payments in a wood fuel supply contract; denied.

PROCEDURE, § 33 — Reconsideration — Grounds for granting — New evidence.

[N.H.] The commission declined to reconsider an order disallowing recovery from ratepayers of royalty payments made by a steam corporation to a wood fuel production company pursuant to termination provisions of a supply contract, where the finding of imprudence that was the basis for the disallowance was premised on testimony of one of the general partners of the wood fuel company, who had since died, and where there was no new evidence that would have changed the effect of that testimony.

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

On November 18, 1986, the Commission issued Report and Third Supplemental Order No. 18,484 (71 NH PUC 667) which

allowed Concord Steam Corporation (Company) to collect additional annual gross revenues of $285,296. In these proceedings, the Staff put at issue the question of whether certain royalty payments made by the Company were an appropriate charge to ratepayers. In its Report the Commission made certain findings and rulings regarding the royalty payments which were made by the Company pursuant to the Termination and Assignment of Rights Agreement dated September 10, 1981 between the Company and Wood Fuel Production Company (WFP).

On December 8, 1986 the Company filed a motion for rehearing relative to the Commission's findings and conclusions on this matter. The Company alleges that the findings and conclusions of the Commission are not supported by the evidence in the record and are thus unlawful and erroneous for the following reasons:

(1) The Commission's finding that "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." (Report, p. 42). "implies that Roger Bloomfield entered into a contractual undertaking with Concord Steam Corporation. The Company contends that there is no evidence, express or implied, to support such a finding. (Motion at 2).

(2) The Commission's findings are based on "its guess" as to what is contained in an agreement, the Qualified Wood Fuel Purchase Contract, (Purchase Agreement) which was not placed in evidence and the contents of which were not known to the Commission. (Motion at 2).

The New Hampshire Attorney General, by Peter C. Scott, Assistant Attorney General, on behalf of the New Hampshire Hospital (NHH) responded and objected to the Motion for Rehearing of the Company on December 12, 1986. The NHH in oppos- ing the Motion takes the position that there is ample authority in the documents cited and in the record to indicate that the Purchase Agreement would be subject to the requirements of RSA 366:3. Moreover, there is ample support for the Commission's finding that Mr. Bloomfield did not act prudently in entering into the Agreements.

After a complete review of the Motion for Rehearing, the reply of NHH and the evidence in the proceeding, the Commission will deny the Motion for Rehearing.

The Commission believes the record amply supports the Commission's finding that the Purchase Agreement between the Company and WFP would be subject to the requirements of RSA 366:3. The Commission recognizes that the Purchase Agreement was between WFP and Concord Steam and not Roger Bloomfield and Concord Steam. However, the fact that Roger Bloomfield was one of two general partners of WFP and as such had a substantial personal financial interest in WFP, creates the same situation relative to the disclosure requirements of RSA 366:1 as a contract between Roger Bloomfield individually and Concord Steam. Clearly, the entirety of the arrangements between Concord Steam and WFP should have been disclosed to the Commission pursuant to RSA 366:1 and 3.

The Commission also believes that its findings relative to the Purchase Agreement and the prudency of Roger Bloomfield's actions are fully supported by the evidence in the proceeding. Contrary to the Company's contention that the Commission was relying on "its guess" as to the content of the Purchase Agreement, the Commission was relying on the testimony of Roger Bloomfield relative to that contract. Roger Bloomfield testified that the Purchase Agreement did not provide specifications for the wood to be supplied and that WFP could have satisfied the contract terms by supplying wood from Connecticut Valley Chipping that Concord Steam could not use. (2 Tr. 132-134) The whole point of this testimony was that Concord Steam was forced by this situation to accept the terms of the

Termination and Assignment of Rights Agreement. The Commission did not have to see the actual Purchase Agreement to accept Mr. Bloomfield's testimony relative to the consequences of that Agreement. (2 Tr. 138-139) In fact, the submittal of the Agreement by the Company presents no new information which would change the Commission's finding.

Since the Commission's findings are based upon the testimony of Roger Bloomfield and Roger Bloomfield has died since the time of the hearing, there was no new evidence that the Company presented that changed his testimony.

For these reasons, the Commission will not reconsider its findings that Roger Bloomfield was imprudent in entering into the WFP Partnership and the Purchase Agreement with WFP, and that the royalty payments arising from the Termination and Assignment of Rights agreement should not have been charged to ratepayers.

Our Order will issue accordingly.

SUPPLEMENTAL ORDER

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

ORDERED, that Concord Steam Corporation's Motion for Rehearing be, and hereby is, denied.

By order of the Public Utilities Commission of New Hampshire this twenty-eighth day of January, 1987.

==========

NH.PUC*02/03/87*[60338]*72 NH PUC 41*Northern Utilities, Inc.

[Go to End of 60338]

72 NH PUC 41

Re Northern Utilities, Inc.

DF 87-13
Order No. 18,558

New Hampshire Public Utilities Commission

February 3, 1987

ORDER authorizing the issuance of notes to refund long-term debt.

SECURITY ISSUES, § 116 — Notes — Purposes — Financing methods — Amortization of premiums.

[N.H.] In order to take advantage of improved market conditions, to maintain financial flexibility, and to remove overly burdensome securities restrictions, a gas utility was allowed to

issue notes to refund long-term debt, with the premiums being paid for the transaction to be considered part of the issuance costs recoverable through rates.

By the COMMISSION:

ORDER

WHEREAS, Northern Utilities, Inc., a New Hampshire corporation having its principal place of business in Portsmouth, Rockingham County, having filed, on January 27, 1987, a petition for authority pursuant to R.S.A. 369: 1 and 4 to issue, and sell at par value $10,000,000 aggregate principal amount of 8.40% Notes due 1997; and

WHEREAS, Northern Utilities, Inc. states that the purpose of the proposed transaction is to refund its total outstanding longterm debt and thereby replace the terms, conditions, and covenants contained within the existing indentures and loan agreements and, in addition, to reduce the level of the outstanding short-term debt; and

WHEREAS, Northern Utilities, Inc. also states that the above mentioned terms and conditions in the existing indentures and loan agreements were created in large part

Page 41

over a span of many years primarily by the predecessor companies, and are overly restrictive and limit the financial flexibility currently required to continue to provide quality service to its customers; and

WHEREAS, Northern Utilities, Inc., is presently authorized to issue short-term notes in an aggregate principal amount not to exceed $8,000,000, by Order No. 18,488 issued November 26, 1986 (71 NH PUC 700) by the New Hampshire Public Utilities Commission; and

WHEREAS, Northern Utilities, Inc., also filed a petition dated January 27, 1987, requesting authority to increase short-term notes not to exceed $14,000,000; and

WHEREAS, Northern Utilities, Inc. has called for redemption effective February 1, 1987 of all its First Mortgage Bonds, which will free it from the restrictive covenants contained in the mortgage indentures; and

WHEREAS, Northern Utilities, Inc., due to the timing difference between the February 1, 1987 redemption and the March 31, 1987 completion of the proposed financing, finds it necessary to use short-term debt as bridge financing; and

WHEREAS Northern Utilities, Inc. seeks authorization to include the premiums paid to refund the existing long-term debt, as well as the unamortized debt expense associated with the existing long-term debt, as part of the issuance costs associated with the proposed financing for accounting and ratemaking purposes; and

WHEREAS, the New Hampshire Public Utilities Commission believes that it would be in the public good to grant said request; it is

ORDERED NISI, that Northern Utilities, Inc. is hereby authorized to issue and sell at par

value $10,000,000 aggregate principal amount of 8.40% Notes due in 1997, the proceeds from the issuance will be used to refund all existing long-term indebtedness and to reduce certain outstanding short-term indebtedness; and it is

FURTHER ORDERED, that the premiums paid to refund the existing long-term debt, as well as the unamortized debt expense associated with the existing long-term debt, as part of the issuance costs associated with the proposed financing will be accepted for ratemaking purposes; and it is

FURTHER ORDERED, that Northern Utilities, Inc. is hereby authorized to issue and sell for cash its notes and notes payable in an aggregate amount not to exceed $14,000,000 to be effective January 30, 1987 and to terminate March 31, 1987; and it is

FURTHER ORDERED, that Northern Utilities, Inc. shall, in the future, 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 January first and July first of each year Northern Utilities Inc. shall file with this Commission a detailed statement, duly sworn to by its Treasurer, showing the disposition of the proceeds of such Notes until the whole of such proceeds shall have been fully accounted for; and it is

FURTHER ORDERED, that this Order NISI shall be effective twenty 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 February, 1987.

==========

NH.PUC*02/04/87*[60343]*72 NH PUC 43*Kent Farm Water Company

[Go to End of 60343]

72 NH PUC 43

Re Kent Farm Water Company

DR 86-198
Order No. 18,560

New Hampshire Public Utilities Commission

February 4, 1987

PETITION by small water utility for authority to initiate service in a residential development and to apply its proposed rates; granted as modified. For corrected depreciation expense and rate calculations see Supplemental Order No. 18,598, 72 NH PUC 87.

---

1. CERTIFICATES, § 125 — Water service — Real estate development — Factors.

[N.H.] A small privately held water utility was authorized to provide service to a new real estate development where no other utility was certificated in the area, the utility was owned by individuals who had previous experience in operating small water utilities, and the utility's plant had been approved by the state pollution control board. p. 44.

2. VALUATION, § 294 — Working capital — Cash requirements — Formula method.

[N.H.] The cash working capital component of a water utility's rate base was increased, using the formula method, where a mathematical error in original computations had understated the utility's cash needs. p. 44.

3. EXPENSES, § 14 — Estimates for the future — Comparisons in absence of evidence — Commonly owned utilities.

[N.H.] Where a small water utility had no operational history of its own upon which to rely when estimating expense levels, but the owners of the utility also owned five other small, similarly situated, well established water utilities, it was reasonable to use the average expense levels of those other utilities as a proxy for the water utility involved in the instant proceeding. p. 46.

4. DEPRECIATION, § 81 — Water utility — Mains — Effect of customer contributions.

[N.H.] Where a water utility had not actually depreciated its mains, but instead had applied customer contributions toward the mains for depreciation purposes, the utility agreed to reduce the cost basis of its accounts by an amount representing the excess of customer contributions over the costs of the mains. p. 46.

5. EXPENSES, § 109 — Taxes — Property taxes — Known liability.

[N.H.] A water utility was not allowed to reflect property taxes in its expense budget where no tax bill had ever been received and where no formal notice of such a tax liability had even been issued. p. 47.

6. RETURN, § 25 — Factors — Comparisons to similar enterprises — Capital structure — Equity rate.

[N.H.] A small water utility's proposed capital structure, based on a 10% equity rate, was accepted, even though no analysis was proffered in support of the proposal, where the utility's capital structure and equity rate were modeled after five similar water utilities owned by the same individuals. p. 47.

7. RATES, § 595 — Water rate design — Consumption charges — Basis.

[N.H.] A small water utility was allowed to implement rates incorporating a base quarterly charge plus a separate consumption charge premised on an assumed average quarterly consumption of 2000 cubic feet per customer. p. 48.

APPEARANCES: Peter Lewis and Stephen Noury on behalf of Kent Farm Water Company; Frederick W. Crowley, customer, on behalf of the customers of Kent Farm Water Company; and Daniel J. Kalinski on behalf of the Commission Staff.

By the COMMISSION:

REPORT

I. PROCEDURAL HISTORY

On June 25, 1986, Kent Farm Water Company (Company) filed a petition to establish a water utility in a limited area in the Town of Hampstead, New Hampshire. In addition, the Company filed proposed tariff pages reflecting the terms and conditions of water service and the rates to be charged therefor. An Order of Notice was issued on July 13, 1986, scheduling a hearing for October 1, 1986, at which Peter Lewis, the Company's president, Stephen Noury, a representative of the firm (Lewis Builders, Inc.) which will provide managerial services to the Company, and Dean Howard, president of DCH Construction, offered testimony and exhibits in support of the petition and proposed tariff pages. Frederick Crowley, a resident of the development the Company seeks to serve, submitted testimony and exhibits on behalf of the Company's customers (Customers). The Commission Staff did not present any witnesses.

II. PETITION TO ESTABLISH A WATER UTILITY

[1] By its petition, the Company seeks authority pursuant to RSA 374:22 to establish a public utility to provide water to Kent Farm Crossing (Crossing), a 96 home, singlefamily development in Hampstead, New Hampshire. The distribution system, including 2 wells and main pipes, was installed by DCH Construction at a total cost of $128,250 in 1984 at the time the homes in the Crossing were being constructed. Since late 1984 when the homes began to be inhabited, the developer of the Crossing, Lewis Builders, Inc. (Lewis), has provided water service to the Crossing at no charge. Peter Lewis, president and controlling shareholder of Lewis, incorporated the Company in 1986 and initiated this proceeding in order to begin charging for water service. Mr. Lewis, his wife and two children each own 25% of the Company's outstanding stock. They are also principals in five other Commissionregulated small water companies: Bricketts Mills Water Company, Glen Ridge Water Company, Lancaster Farms, Squire Ridge Water Company and Walnut Ridge Water Company.

The legal description of the proposed franchise area is contained in Exhibit 3. The area, approximately 1,700 acres, includes only the Crossing development. No other water utility is currently enfranchised to provide water to the Crossing. Although they took issue with many of the Company's positions on issues in the rate portion of this proceeding, the customers indicated a desire to have Kent Farm provide water service and otherwise supported the petition.

At the hearing, the Company submitted a January 9, 1985 letter from the Water Supply and Pollution Control Commission (WSPCC) approving the water system subject to certain conditions, all of which have subsequently been complied with. The letter describes the system as serving 84 sites, not 94. Mr. Noury testified that during 1985 the development was expanded to include an additional 12 lots, and that the Company had requested and was awaiting further written authorization from the WSPCC. Subsequent to the hearing, additional approval was obtained and submitted to the Commission on December 31, 1986. Mr. Noury further testified that the Company currently has no intention to expand the water system, and has performed no

feasibility study to determine whether expansion is possible.

In view of the above, we find that awarding the proposed franchise area to the Company will be consistent with the public good. Accordingly, the Company's petition will be granted. The Company is hereby authorized to commence business as a public utility in the area described in Exhibit 3.

III. RATES

A. Rate Base

[2] The Company proposes a rate base of $81,497, calculated as follows:

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

Gross plant $128,252
Less: Customer Contributions 48,000
80,252

Plus: Working Capital 1,245
Rate Base $ 81,497

The gross plant figure represents the total cost of the system installed by DCH Construction (DCH). DCH collected $500 per lot from Lewis, the developer, which the Company has deducted from gross plant as customer contributions in aid of construction. The Company's working capital figure of $1,245 represents cash working capital calculated in accordance with the so-called "formula method", whereby cash working capital is estimated to be the equivalent of 45 days (1.5 months) of a utility's operation and maintenance expenses for a utility that bills monthly, or 75 days (2.5 months) where quarterly billing is employed. The Company incorrectly utilized 1.5 instead of 2.5 in its calculation.

With the exception of working capital, the Customers support the Company's rate base. They agree that the formula method should be employed. However, because the Customers disagree with the level of operation and maintenance expenses proposed by the Company, their cash working capital component is different.

The gross plant and customer contribution figures and the various inputs thereto are amply supported by the record and have been calculated consistent with wellestablished ratemaking principles. Accordingly, we will adopt them for purposes of this proceeding. In addition, we agree with the parties that the formula method should be used to derive cash working capital. Utilizing the operation and maintenance expenses approved herein, we find the Company's cash working capital to be $2,076.00 ($9,963 ° 12 = $830.25 x 2.5 = $2075.62).

We find the Company's rate base to be as follows:

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

Gross plant $128,252
Less: Customer Contribution 48,000
80,252
Plus: Working Capital 2,076
Rate Base 82,328

B. Expenses

1. Operation and Maintenance Expenses

The amount of operation and maintenance expenses the Company seeks to recover through rates is $9,963 (Revised Exhibit F to Exhibit 2), calculated as follows:

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

Superintendence $4,680
Purification (Water Testing) 150
Maintenance of Pumps 400
Power Purchased 2,423
Customer Meter Reading 240
Customer Billing 600
Office Supplies 350
Supervision Fees 1,000
Franchise Requirements 120
$9,963

Mr. Noury testified that with the exception of power costs, the above figures are estimates based upon the actual expenses incurred by the other companies owned and operated by Mr. Lewis and his family. The "Power Purchased" figure represents the total amount paid to Public Service Company of New Hampshire during the 1985 calendar year for electricity used exclusively to operate the system.

The customers agree with the Company's estimates regarding water testing, pump maintenance, customer meter reading and franchise requirements. However, they disagree with the Company's figures for the remaining items and propose the following be adopted instead:

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

Superintendence $4,520

1(13) ($160)
Power Purchased 2,186 (237)
Customer Billing 365 (235)
Office Supplies 207 (143)
Supervision Fees 820 (180)
955

The derivation of these figures is contained in Exhibit D to Exhibit 5. Therein, the Customers have utilized what they feel are reasonable time and wage variables to arrive at their estimates. Like the Company, the

Customers' power cost estimate is based on actual bills received in 1985. However, the Customers argue that they should not have to pay to heat the pump house during the winter and have reduced the actual 1985 expense to reflect that position. The Customers contend that the Company should insulate the pump house, which would result in lower electric bills. Overall, the Customers' operation and maintenance expense estimate is $955 lower than that proposed by the Company.

[3] After review, we will accept the estimates proffered by the Company. Unlike the Customers' figures, they are based on the expense levels experienced by five small water companies owned and operated by Mr. Lewis and his family. We find the expense levels of

similar systems to be an appropriate proxy in fixing a new company's rates. Because the Customers' estimates are not based upon an operating utility's actual experience, we decline to adopt them. It must be noted that the approximately $1,000 difference between the parties' estimates is relatively small; it represents about 4 1/2% of the Company's revenue requirement.

The Commission shares the Customers' concerns over the Company's expenses. Because this is a new company, history is not available as a guide; rates cannot be based on a recent test year. We are left to our judgment in estimating future expenses. Our role, however, does not end with this proceeding. We will monitor the Company's actual operating results through the periodic reports the Company is required to file under Commission rules to make sure that the Company is not earning in excess of its allowed return. If we find it is, we will open a proceeding to review the Company's rates.

2. Depreciation

The Company submitted the following calculation of its annual depreciation expense (Revised Exhibit D to Exhibit 2).

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

		COST BASIS	ANNUAL RATE	EXPENSE
2308.1	Well	12,000	2%	240.00
2308.2	Pumping Structure	4,907	2.5%	122.68
2308.5	Dist. Reservoir	20,000	2%	400.00
2316.2	Electric Pumping Equip.	16,881	10%	1,688.10
2356.0	Mains	43,040		
	Less Customer Cont.	(48,000)		
	-0-		2%	-0.Pp
2359.0	Services	26,092	2.5%	652.30
2360.0	Customer Meters	5,332	2.5%	133.30
	Annual Depreciation Expense			3,236.38

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

[4] The Company did not depreciate Mains, opting instead to apply customer contributions toward the Mains for depreciation purposes. During the hearing, Mr. Noury and Mr. Lewis agreed, at the suggestion of Staff and the Customers, to reduce the cost basis of the Services account by the excess of the contributions over the cost basis of the mains (4,960), which results in a cost basis of 21,132 for Services. At 2.5%, the annual depreciation expense becomes $528.30. In addition, at Staff's suggestion, the Company agreed that 5%, not 2.5%, should be used for Meters. In so doing, the annual depreciation expense for Meters becomes $266.60. As a result of these changes, the total annual depreciation expense is $3,503.18. We accept the proposed depreciation expense as amended. The rates utilized are consistent with Commission precedent.

3. Property Taxes

[5] The Company argues it will be required to pay annual property taxes to the Town of Hampstead of $2,815. This figure is not based upon any tax bill received from Hampstead, but is instead Mr. Noury's estimate of what the tax should be utilizing the current rate of $21.95 as applied to cost of the system. Neither Mr. Noury or Mr. Lewis has discussed property tax liability with any representative of Hampstead. Their belief that a tax will in fact be assessed in December of 1987 stems from a

conversation Mr. Noury had with Hampstead's former tax assessor who is now employed by the Department of Revenue Administration. He expressed a belief that such a bill would be forthcoming next year.
The Customers disagree with the proposed property tax figure. They submitted a letter from Kenneth H. Clark, Chairman of the Board of Selectmen, which states that Hampstead assesses $4,300 to each piece of property for a water supply and septic system to the lot, and that there is therefore no additional assessment to the water company "except for the land that it sits on" (Exhibit F, Attachment 1 to Exhibit 5).
On the basis of the letter, the Customers propose that either $11 or $35 will be the Company's property taxes. The calculation is set forth in Exhibit F to Exhibit 5. Because of our finding below, it is not necessary to reprint it here.
In order for an expense to be recovered through rates, a utility has the burden of establishing that the expense is known and measurable. The Company has not met that burden regarding the $2,815 property tax expense. No bill has been received, nor has the Company had any contact with Hampstead officials. More importantly, Mr. Lewis' other Hampstead-based water Company, Bricketts Mill Water Company, has never received a property tax bill. It therefore, cannot be said that the Company will receive a tax bill for $2,815. Accordingly, we will exclude $2,815 from the Company's cost of service.

C. Rate of Return

The Company's capital structure consists of $4,000 in equity, provided by four stockholders (the Lewis family), and long term debt of $76,252, which the Company will obtain from a local lending institution when it receives Commission approval to operate as a public utility and collect rates. The proceeds of the debt will be used to pay DCH, who, as stated above, installed the system.
The Company proposes a cost rate of 10% for both debt and equity, and, accordingly, an overall rate of return of 10%. With regard to the debt cost rate, Mr. Noury testified that the institution that will likely provide the debt financing has indicated that the rate bill be 2 percentage points higher than the prime rate. At the time of the hearing, the prime rate was 8%. No testimony was provided regarding the derivation of the equity cost rate.
[6] We find the proposed capital structure and equity cost rate to be reasonable. While no analysis was provided supporting the 10% equity rate, we note that it falls within the range of actual earnings of the sample group of water utilities used by the Commission in determining the cost of equity for small water companies. Regarding the cost of debt, we note that the prime rate has fallen since the hearing; it currently is 7.5%. Given that the Company's interest rate is to be set at 2 points above the prime, we will utilize 9.5% instead of 10% to determine the Company's overall return, which we calculate as follows:

Component Type	Component Amount	Weighted Ratio	Cost	Cost
Long Term Debt	$76,252	.95%	9.5%	9.02%
Common Equity	4,000	.05%	10%	.5%
Total	80,252	10050%		9.52%

Applying 9.52% to the rate base of 82,328 yields a return requirement of $7,838.00

D. Revenue Requirement

We compute the Company's revenue requirement as follows:

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

Operation and Maintenance $9,963
Depreciation Expense 3,503
Return Requirement 7,838
Revenue Requirement 21,304
```

E. Rate Structure

[7] The Company proposes a rate structure consisting of a base charge of $16.00 per quarter and a consumption charge of $2.40/100 cubic feet to recover a revenue requirement of $24,164 calculated as follows:

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

Depreciation $  3,236
 Real Estate Taxes 2,815
   $  6,051

6,051 ° 96 = 63.03 Annual/16.00 Quarterly

 Revenue Requirement $24,164
 Less Base Charge 6,051
   $18,113

 18,113 = .024 per cubic feet or 2.40 per hundred
768,000  (2,000 cubic foot consumption per quarter

Proposed Tariff Rate

 Base Charge $16.00
 All Consumption $  2.40/100 cu. ft.
```

Utilizing the approved revenue requirement of $21,304, the above methodology yields a rate structure composed of a base charge of $9.12 and a consumption charge of 2.31/100 cubic feet, the derivation of which is set forth below.

The customers strongly disagree with the use of 2,000 cubic feet per customer per quarter to derive the consumption charge. They argue that 3,045 cubic feet per quarter is a more appropriate average consumption figure. As set forth on Exhibit B to Exhibit 5, 3,045 represents the average of 20 customers usage rates from prior residences, the lowest being 967 and the highest 6,504. The Company argues that 2,000 cubic feet has been utilized in setting up the other Lewis water companies. Moreover, according to Mr. Noury, the average consumption for the first two quarters of 1986 for Lancaster Farms and Glen Ridge was approximately 2,000 cubic feet. Given the similarity between those systems and the Company, the Company argues that 2,000 cubic feet is the appropriate estimate for this proceeding.

We agree with the Company that 2,000 cubic feet per customer per quarter should be utilized to calculate its consumption charge. As reflected in the Commission's records, the historical average consumption of water companies under our jurisdiction is 2,000 cubic feet. Accordingly, the Commission has utilized it in determining a new company's consumption charge. The 1986

consumption data for two similar small systems, Lancaster Farms and Glen Ridge, establishes the reasonableness of utilizing 2,000 cubic feet. Again, we acknowledge and appreciate the Customers' efforts in this

regard. However, we feel that New Hampshire regulated utility historical data is a more appropriate guideline than the Customers' data which apparently includes outof-state and municipal systems. As stated above, we will monitor the Company's actual operating results to ensure that if actual consumption is greater, the Company does not earn in excess of its rate of return.

In view of the above, we calculate the Company's consumption charge as follows:

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

Depreciation: 3,503 ° 96 =
36.49 annually/$9.12 quarterly

Revenue Requirement 21,304
Less Base Charge 3,503
 17,801

17,801  .0231 per cubic feet or
768,000  2.31 per hundred

(2,000 cubic foot consumption per
quarter per customer)
```

F. Miscellaneous

At the hearing, Mr. Noury and Mr. Lewis testified that it is the Company's intention to maintain and be responsible for the "service" line from the main pipe to the customer's shut-off valve, whether or not the valve is on the customer's property. Most water utilities under the Commission's jurisdiction own and maintain the piping up to the property line. Indeed, that policy is contained in the "Terms and Conditions" section of the proposed tariff. Thus, the Company's tariff does not reflect the Company's policy.

As we stated at the hearing, the Company should investigate whether it should, like most other water companies, be responsible for everything up to the property line. We advise the Company to meet with Staff in this regard. Whatever the Company decides, it should be accurately reflected in the Company's tariff.

The Company's rate filing did not comply with the Commission's tariff filing requirements contained in Chapter 1600 of the Commission's rules. We acknowledge that some of the requirements may be unduly burdensome for a small utility like the Company. However, the rules must be complied with unless a waiver is granted. We advise the Company to confer with the Commission Staff regarding what rules may be waived and to make such a request in its next rate case.

Lastly, we want to note our appreciation to the Customers for the time and effort they have devoted to this proceeding. Their involvement greatly aided the Commission in setting just and reasonable rates for the Company.

Our Order will issue accordingly

ORDER

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

ORDERED, that Kent Farm Water Company be, and hereby is, authorized to conduct operations as a water utility in the limited area of the Town of Hampstead described in the foregoing Report; and it is

FURTHER ORDERED, that the tariff pages filed by Kent Farm Water Company on June 25, 1986 be, and hereby are, rejected; and it is

FURTHER ORDERED, that Kent Farm Water Company shall be allowed to collect gross annual revenues of $21,304 by utilizing the following rate structure: $36.49 per customer per year ($9.12 quarterly) and $2.31 per hundred cubic feet of consumption; and it is

FURTHER ORDERED, that Kent Farm Water Company shall file revised tariff pages reflecting the approved rates which shall become effective for all service rendered on or after January 1, 1987.

By order of the Public Utilities Commission of New Hampshire this fourth day of February, 1987.

FOOTNOTES

[1]In their filing, the customers proposed

superintendence fees based on $15.00 per hour. At the hearing Mr. Crowley agreed that $20.00 was a more reasonable figure (Transcript, page (129). Utilizing $20.00 per hour instead of $15.00 results in a superintendence estimate of $4,520.

==========

NH.PUC*02/09/87*[60399]*72 NH PUC 54*Public Service Company of New Hampshire

[Go to End of 60399]

72 NH PUC 54

Re Public Service Company of New Hampshire

DR 86-122
Sixth Supplemental Order No. 18,562

New Hampshire Public Utilities Commission

February 9, 1987

MOTION for review of a procedural schedule; denied.

PROCEDURE, § 39 — Time limitations — Motions — Basis for motion.

[N.H.] Although denying a motion for review of a hearing and procedural schedule because the motion was based on mere speculation and anticipation, the commission did find some merit to concerns expressed in the motion, and it therefore set some time limitations on discovery and the filing of written testimony.

By the COMMISSION:

REPORT

The Consumer Advocate moves to have the Commission review the hearing and procedural schedule in the proceeding. The Consumer Advocate anticipates that Public Service Company of New Hampshire (PSNH) will change its original request to spread the revenue deficiency, if any, equally across all customer classes. If this occurs, the Consumer Advocate states, "PSNH has the burden of proof and all intervenors to this proceeding are entitled to its theory of the case on rate design prior to filing their own case."

PSNH's response to the Consumer Advocate's motion is that PSNH has negotiated in good faith in the consultative process with all willing parties and until the consultative process is completed PSNH does not know if it will change its original position. The BIA concurs with PSNH's objection to the Consumer Advocate's motion.

The Commission has reviewed the Consumer Advocate's motion and the parties responses thereto and makes the following observations:

1. This proceeding was initiated on June 30, 1986 and in accordance with RSA 378:6 must be completed by June 30, 1987.

2. Rate design is a material issue in this proceeding.

3. Report and Order No. 18,375 issued on August 20, 1986 (71 NH PUC 494) specifically did not order the parties to engage in a consultative process in this hearing.

4. The Commission in the above report acknowledged that the consultative process is administrative economy and provides a mechanism which helps parties understand each other's positions thereby reducing the hearing time. However, such process must have willing participation.

5. The Commission cannot force parties to settle issues if such parties choose to exercise their right to fully litigate those issues.

The Commission finds that the Consumer Advocate's motion is based on speculation and anticipation and could be denied on that basis. However, the motion draws attention to a potential procedural problem that could delay the proceeding to a point that would prohibit the Commission from having an appropriate period of time to prepare a proper report and order.

In this proceeding, PSNH by its filings proposed to spread any revenue allowed evenly across the classes. The Business and Industry Association (BIA) proposed to show that Commercial and Industrial classes are currently subsidizing the residential class and revenues allowed equally across all classes would further exacerbate an unfair burden that presently exists. The discovery between BIA and PSNH has raised questions on whether the marginal cost studies employed by PSNH are calculated correctly. The Consumer Advocate has not filed any testimony to date. The Commission has not reviewed this evidence or received testimony that would indicate whether or not PSNH will change its original position. However, a letter from PSNH's attorney to the Consumer Advocate indicates that the consultative process could possibly produce a change.

In consideration of the time constraints imposed in this proceeding, the Commission will issue an additional procedural order to insure that this proceeding moves forward in an orderly fashion.

Page 55

All parties shall file a position paper on rate design along with written testimony and exhibits to support their positions on rate design issues on or before March 3, 1987. If prior written testimony or exhibits will be relied upon, it shall be stated in the position paper.

All discovery requests on each party's testimony and/or exhibits shall be exchanged by March 10, 1987.

All discovery responses shall be exchanged by March 17, 1987.

All rebuttal testimony and exhibits shall be filed by April 1, 1987. Hearings shall begin on April 15, 1987.

SUPPLEMENTAL ORDER

The Commission finds that the position presented by the Consumer Advocate does not support the approval of the Consumer Advocate's Motion. However, due to the concerns of the Commission regarding time constraints, it is necessary to direct a procedural schedule to meet said concerns. Therefore, it is hereby

ORDERED, that the Consumer Advocate's Motion for Procedural Order is denied; and it is

FURTHER ORDERED, that the procedural schedule as outlined in the Report is adopted.

By Order of the Public Utilities Commission of New Hampshire this ninth day of February, 1987.

==========

NH.PUC*02/09/87*[60410]*72 NH PUC 56*New England Telephone and Telegraph Company

[Go to End of 60410]

Re New England Telephone and Telegraph Company

DE 87-14
Order No. 18,565

New Hampshire Public Utilities Commission

February 9, 1987

ORDER authorizing the relocation of underwater telephone plant to avoid problems from nearby bridge construction.

TELEPHONES, § 2 — Construction and equipment — Submarine plant — Relocation.

[N.H.] Where a telephone carrier had been installing submarine cable near a bridge that had itself become the subject of new construction, interfering with the cable's installation, the carrier was instructed to temporarily relocate the cable to a nearby railroad bridge.

By the COMMISSION:

ORDER

WHEREAS, on January 23, 1987, this Commission was advised by letter from New England Telephone & Telegraph Company (NET) that its submarine cable plant in Concord, New Hampshire, was interfering with on-going bridge construction; and

WHEREAS, Commission staff learned on January 24, 1987 that construction had snared the 600-pair cable involved, causing no damage; and

WHEREAS, such incidents could delay construction and subject the State of New Hampshire to penalties; and

WHEREAS, staff learned that verbal authorization by the Railroad Division of the Department of Transportation had been received for temporary relocation of a 100pair cable along the railroad bridge to meet interim telephone needs until permanent relocation of the 600 pair submarine cable; and

WHEREAS, the license for the 600-pair crossing was granted by Order No. 12,730 in Docket DE 77-14, April 29, 1977 (62 NH PUC 123) having been found necessary to meet the reasonable requirements of the public, without substantially affecting the public rights and the waters crossed; and

WHEREAS, temporary relocation of the telephone plant along the railroad bridge falls under the scope of placing and maintaining the submarine plant granted by the earlier order; it is

ORDERED, that the temporary relocation of the telephone plant along the railroad bridge as depicted in the drawing on file with this Commission be, and hereby is granted according to RSA

371:20 and the earlier Order No. 12,730.

By order of the Public Utilities Commission of New Hampshire this ninth day of February, 1987.

==========

NH.PUC*02/09/87*[60418]*72 NH PUC 57*Chichester Telephone Company

[Go to End of 60418]

72 NH PUC 57

Re Chichester Telephone Company

DR 86-260
Order No. 18,566

New Hampshire Public Utilities Commission

February 9, 1987

ORDER accepting revised corrected telephone tariff sheets.

RATES, § 237 — Schedules and formalities — Filing — Revisions and corrections.

[N.H.] Where a local exchange telephone carrier had made required corrections to its tariff sheets, its revised tariffs were accepted for filing.

By the COMMISSION:

ORDER

WHEREAS, on September 30, 1986, the Chichester Telephone Company filed with this Commission certain revisions to its Tariff No. 3, said revisions proposed to update terms and conditions therein; and

WHEREAS, said filing was suspended by Order No. 18,435, October 7, 1986 Pending Commission investigation and decision thereon; and

WHEREAS, Commission staff met with Chichester personnel to discuss errors and omissions resulting in the filing of corrected pages on November 28, 1986; and

WHEREAS, subsequent review indicated the need for additional corrections which was filed on January 20, 1987; and

WHEREAS, it now appears that the filing is in order and a decision can be rendered; it is

ORDERED, that the following pages of the Chichester Telephone Company Tariff No. 3 be, and hereby are, rejected:

SECTION 1

Sheet 2 4th Revision

Sheet 2A 1st, 2nd & 3rd Revisions

Sheet 3 4th Revision

Sheet 5 1st Revision

SECTION 3

Sheet 1 3rd, 4th & 5th Revisions

Sheet 2 2nd, 3rd & 4th Revisions

Sheet 4 1st Revision

Sheet 8 2nd Revision

Sheets 9A, C,

D, E, F, G,

H and I All 1st Revision

Sheet 11 1st Revision

Sheet 13 1st, 2nd & 3rd Revisions

Sheet 14 1st Revision

SECTION 4

Sheet 1A 2nd & 3rd Revisions

Sheet 1B 3rd & 4th Revisions

Sheet 1C 2nd & 3rd Revisions

Sheet 1D 4th & 5th Revisions

SECTION 5

Sheet 1 1st, 2nd & 3rd Revisions

Page 57

---

and it is

FURTHER ORDERED, that Chichester Telephone file the following revised tariff pages for effect on February 20, 1987;

SECTION 1

Sheet 2 5th Revision

Sheet 2A 4th Revision, correcting

interest rate to 10%

Sheet 3 5th Revision

Sheet 5 2nd Revision

SECTION 3

Sheet 1 6th Revision

Sheet 2 5th Revision

Sheet 4 2nd Revision

Sheet 8 3rd Revision

Sheets 9A

and 9C

through 9I 2nd Revision

Sheet 11 2nd Revision

Sheet 13 4th Revision

Sheet 14 2nd Revision

SECTION 4

Sheet 1A 4th Revision

Sheet 1B 5th Revision

Sheet 1C 4th Revision

Sheet 1D 6th Revision

SECTION 5

Sheet 1 4th Revision

said revisions correcting issue numbers and effective date in addition to reasons previously listed; and it is

FURTHER ORDERED, that one-time public notice be given by publication of a summary of the purpose of these changes in a newspaper widely read by subscribers in the Chichester area.

By order of the Public Utilities Commission of New Hampshire this ninth day of February, 1987.

==========

NH.PUC*02/09/87*[60423]*72 NH PUC 58*Southern New Hampshire Water Company, Inc.

[Go to End of 60423]

72 NH PUC 58

Re Southern New Hampshire Water Company, Inc.

DR 86-131
Order No. 18,568

New Hampshire Public Utilities Commission

February 9, 1987

PETITION by water utility for approval of a stipulated rate increase; granted.

---

1. VALUATION, § 25 — Date of valuation — Updates — Restrictions.

[N.H.] As part of a stipulated rate increase agreement, a water utility was allowed to update its rate base by eight months, but the update was not permitted to reflect those months for which temporary rates had already been placed in effect. p. 59.

2. DISCRIMINATION, § 184 — Water rates — Division subsidies — Phase out.

[N.H.] A water utility was required to phase out over a two-year period a subsidy one of its divisions had been receiving, in order to make the division self-supporting. p. 60.

3. EXPENSES, § 89 — Rate case expense — Surcharge mechanism.

[N.H.] Although not accepting the level of rate case expenses filed, the commission approved a water utility's method for recouping any such allowed expense, which involved a surcharge mechanism for a two-year period. p. 60.

APPEARANCES: As previously noted.

By the COMMISSION:

REPORT

On May 16, 1986, Southern New Hampshire Water Company (Company), a public utility providing water service in the State

of New Hampshire, filed revised tariff pages reflecting an increase of $279,168 in its annual revenues, said tariff to become effective on June 16, 1986. Subsequently, June 16, 1986, the Commission issued Or- der No. 18,301 (71 NH PUC 365), suspending the effective date of the tariff revisions pursuant to RSA 378:6, pending investigation. On July 24, 1986, the Commission, through Order No. 18,347, set a procedural schedule for discovery and hearings on the Company's petition.

On July 7, 1986, the Company requested temporary rates, effective June 16, 1986, at the level of its then current permanent rates. A hearing was held on the Company's petition for temporary rates, thereafter the Commission issued its Order No. 18,391 (71 NH PUC 530), granting the Company's request for temporary rates making said temporary rates effective as of September 3, 1986.

In accordance with the procedural schedule by the Commission, data requests and testimony were submitted by Staff. Responses to data requests, and data requests for Staff were submitted by the Company also in accordance with the procedural schedule. There were no requests for

intervenor status in these proceedings.

Staff and the Company met on December 11, 1987, pursuant to Order No. 18,347. The purpose of this meeting was to narrow issues in the docket. At this, and subsequent meetings Staff and the Company negotiated a stipulation agreement which settled all issues in the docket.

On January 19, 1987 a duly noticed public hearing was held at the Commission offices in Concord, N.H. Therein, the Company and Staff presented the stipulation as an exhibit (No. 6). The stipulation reduced the Company's requested increase in annual revenues from $279,168 to $212,903.

Overview of Stipulation

[1] Through the stipulation the Company was allowed to update its filed rate base from a calculation utilizing an average balance at year end December 31, 1985 to an average balance at year end August 31, 1986. In addition, the operating income statement was updated to reflect actual revenues and expenses as of October 31, 1986. The operating income was further proformed to reflect known and measurable changes up to twelve months beyond the test year (10/31/87).

The parties agreed it was inappropriate to update rate base through October 31, 1986 because temporary rates in this docket are approved effective September 3, 1986. Updating rate base beyond September 3, 1986 would cause ratepayers to pay a return on plant which is not used and useful once temporary rates are reconciled with the allowed permanent rate increase, i.e., recoupment of temporary rates.

The parties explained that the Stipulation Agreement sets forth revenue requirements for each of the Company's divisions. Said revenue requirements were designed in such a way that they reflect, as much as was deemed reasonably possible, the cost of service for each of the divisions. The parties further explained that for certain divisions a complete match of the cost to serve customers would result in an unduly burdensome rate. Therefore, to establish reasonable rates for all divisions some cross subsidization was required. However, the parties stressed that the subsidies are necessary to avoid suppressing customer growth in the affected divisions. Such growth is needed to provide economies of scale so these divisions may eventually support its individual cost to serve.

The stipulation included statements for each division[1(14)] . Based on these statements and rate base computations, filed by the company on December 24, 1986 (entitled — "Southern New Hampshire Water Company, Inc., Update of DR 86-131, December — 1986"), the parties computed each division's cost of service which was used as guide for the following revenue requirements:

Page 59

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

	Percent Increase	Increase
Core System	$ 83,129	3.89%
Williamsburg	7,249	48.81%
Goldenbrook	9,366	53.87%

W & E 16,480 36.54%
Londonderry 62,368 95.48%
Amherst 3,794 50.76%
Sawmill 2,262 14.76%
Avery 1,045 15.03%
East Derry 12,400 N/A
Hardwood 5,200 N/A
Smythe Woods 8,800 N/A
Total $212,093 9.17%

In the stipulation, the parties settled on a long term debt cost of 12.07%, an 11.91% cost of equity, and a capital structure of 57% debt to 43% equity including a proformed permanent financing proposed by the Company. Said financing to transpire concurrent with approval of rate relief in this docket. The parties further agreed to an average rate base of $6,790,202 calculated based on thirteen monthly balances and a net operating income of $697,388[2(15)] , resulting in the required revenue increase of $212,903.

The Amherst Division

[2] In addition to the above, the parties agreed to a "phase-out" of the subsidy Amherst receives in this stipulation. The subsidy is calculated by the difference between the computed cost of service for the division and the revenue requirement agreed upon within the stipulation. This subsidy will be reduced by 50% in the Company's next filing for rate relief and again by 50% in the next subsequent filing. It is presumed that subsidy will be eliminated after the second succeeding rate case involving the Company. Following this Amherst will be fully self supporting.

Second Rate Filing

The stipulation also provides for a second rate case filing. Through the stipulation the Company may file a revised rate petition which updates its Cost of Capital, Rate Base and net operating income (1/19/87 Tr. 23-25) as of August 31, 1987. If this filing is forthcoming and the Commission suspends such pending investigation, the parties further agree that the then existing rate will be made temporary as of the date of any such suspension.

Rate Case Expense

[3] The parties have stipulated that the expense incurred by the Company during these proceedings will be surcharged over a two year period. The detail of these expenses will be provided by the Company once the final costs can be determined.

Commission Analysis

After review of the Stipulation the Commission believes that said stipulation is in general just and reasonable and in the public good. Such stipulations have been granted by this Commission as precedent.

We will not, however, accept the rate case expense as filed (Exhibit E to the Stipulation). Full disclosure of legal and other costs incurred will be necessary to permit an adequate evaluation of these expenses. Upon presentation of said data and completion of investigation thereof, the Commission will issue the appropriate Order or Order of Notice for further investigation, whichever the Commission deems necessary.

Our order will issue accordingly.

ORDER

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

ORDERED, that Southern New Hampshire Water Company, Inc. is hereby authorized to increase its rates by $212,093 on a permanent basis; and it is

FURTHER ORDERED, that Southern New Hampshire Water Company, Inc. file tariff pages computing the shortfall in

Page 60

temporary rates since September 3, 1986; and it is

FURTHER ORDERED, that Southern New Hampshire Water Company, Inc. submit further detail of its rate case expenses in accordance with the foregoing report.

By order of the Public Utilities Commission of New Hampshire this ninth day of February, 1987.

FOOTNOTES

[1]The Policy Water System was not included in the Company's filing for this docket.

[2]The effect of the Tax Reform Act of 1986 is reflected in the stipulation to the extent possible. The Federal tax rate used was 40% and some adjustment was made to reflect a reduction in excess deferred taxes.

==========

NH.PUC*02/11/87*[60430]*72 NH PUC 61*New England Telephone and Telegraph Company

[Go to End of 60430]

72 NH PUC 61

Re New England Telephone and Telegraph Company

DE 87-12
Order No. 18,572

New Hampshire Public Utilities Commission

February 11, 1987

ORDER requesting comments from the public on the proposed installation of underwater telephone plant.

TELEPHONES, § 2 — Construction and equipment — Submarine plant — Comments.

[N.H.] Comments were solicited on a telephone carrier's proposal to increase its service

capacity through the installation of underwater plant in public waters.

By the COMMISSION:

ORDER

WHEREAS, on January 27, 1987, the New England Telephone & Telegraph Company (NET) filed with this Commission a petition seeking license to place and maintain submarine telephone plant beneath the waters of Tide Mill Creek in the Town of Hampton, New Hampshire; and

WHEREAS, said telephone plant is necessary to serve the growing needs of the Hampton exchange; and

WHEREAS, this Commission finds such construction in the public good; and

WHEREAS, the public should be offered the 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 March, 3, 1987; and it is

FURTHER ORDERED, that NET effect said notification by publication of this order once in The Union Leader and in the Portsmouth Herald, such publication to be no later than February 16, 1987 and designated in affidavits to be made on a copy of this order and filed with this office; and it is

FURTHER ORDERED, NISI that NET be authorized, pursuant to RSA 371:17 et seq to place and maintain telephone plant beneath the public waters of Tide Mill Creek in Hampton, New Hampshire; and comprising two 1800-circuit submarine cables installed between Manholes]44 and]45 situated on State Highway]51 as depicted in NET Drawing No. 54-1; and it is

FURTHER ORDERED, that all construction meet requirements of the National Electrical Safety Code and other applicable safety standards as well as the conditions mandated by the Wetland Board Permit N-867 to assure protection of salt marsh areas; and it is

FURTHER ORDERED, that such authority shall be effective 20 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 eleventh day of February, 1987.

==========

72 NH PUC 62

Re Stewartstown Steam Company

DR 86-98
Order No. 18,573
New Hampshire Public Utilities Commission
February 11, 1987

APPLICATION by small power production facility for authority to implement front-end loaded rates; granted.

COGENERATION, § 24 — Rates — Front-end loading — Factors.

[N.H.] A wood-fired small power production facility was granted authority to institute levelized front-end loaded rates for its power, where the rates would not be for longer than a 20-year term and where the project was sufficiently developed to assure that the project would maintain its level of annual output and would have a service life at least equal to the rate term; in evaluating the development of the project, the commission noted the facility's successful experience in a similar project in another state as well as the facility's prudence in already securing longterm guarantees of supplies of wood fuel products.

APPEARANCES: Angus S. King, Jr., Esquire for Stewartstown Steam Company; Thomas B. Getz, Esquire and Sulloway, Hollis & Soden by Eaton W. Tarbell, Jr., Esquire and Margaret H. Nelson, Esquire for Public Service Company of New Hampshire; Joseph Rogers, Esquire for Consumer Advocate; Dr. Sarah P. Voll, Mark Collin and Nadeen Gazaway for Staff of the Public Utilities Commission.

By the COMMISSION:

REPORT

I. PROCEDURAL HISTORY

On March 28, 1986, Stewartstown Steam Company (Stewartstown) filed a long term rate petition for a proposed 13.8 MW woodfired small power production facility to be located in West Stewartstown, 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 Docket No. DR 85-215, Report and Order No. 17,838 (September 5, 1986), 70 NH PUC 753, 69 PUR4th 365 (DR 85-215). The petition requested, inter alia, a thirty (30) year rate order and a 1988 online year for the Stewartstown plant. On August 25, 1986 Stewartstown filed an amendment to its rate petition requesting a twenty (20) year rate order and a 1989 online year. Upon review of the rate petition as originally filed, the Commission found that the issues involved in the Stewartstown petition warranted further investigation and, by Order No. 18,233, decided to

consider the Stewartstown petition in conjunction with a number of other dockets involving rate petitions for other wood burning small power production facilities. A prehearing conference was held in these dockets on May 13, 1986. By Order No. 18,287 (71 NH PUC 339) the Commission accepted the procedural schedule requested by the parties, which concluded with a hearing scheduled for Stewartstown on July 8, 1986. Hearings were subsequently held for Stewartstown on July 8, 10, September 4, 12, and 29, 1986. The Commission granted the parties' request to file briefs. Public Service Company of New Hampshire (PSNH) and Stewartstown submitted their briefs on November 5, 1986.

II. POSITION OF THE PARTIES

A. STEWARTSTOWN

Stewartstown takes the position that the Commission should approve the rates that

Page 62

it requested in its amended petition. In taking this position, Stewartstown identifies the issues to be decided as whether there is a "reasonable expectation" that the project will be constructed and come on-line as projected, and whether there is a reasonable likelihood that the project will stay on-line and deliver the expected level of power during the term of the rate. These two issues speak to the maturity and the long term viability of the project, respectively. Stewartstown asserts that the evidence demonstrates the maturity and long term viability of the project.

Regarding the maturity of the project, Stewartstown argues that all the essential elements necessary for the development of the project are now in place, including an executed fuel contract option, identified financing sources, a fully developed plant design and air resource permit. Stewartstown further argues that the project's feasibility was established long before the rate filing, noting that PSNH's own witnesses, Mr. Cleverdon and Mr. Brown, conceded that the project appeared to be the furthest advanced and met more of the PSNH criteria for being mature than any of the other wood-fired project proposals before the Commission. Brief at 7.

Stewartstown cited extensive experience, involving hydro and bio-mass facilities, in twelve prior projects that it has developed according to schedule. Stewartstown placed particular emphasis on its experience regarding the nearly complete Greenville Steam Company (Greenville) facility, a woodfired power plant under construction in the State of Maine.[1(16)]

Regarding the second issue, the long term viability of the project, Stewartstown argues that the project's engineering, design and identified fuel supply provide reasonable assurance that the project will remain online for at least a twenty year duration of its requested rate order. In particular, Stewartstown again points to its experience regarding the Greenville project, the respected engineering firms involved in the Stewartstown project design, the high quality of the equipment chosen for the project, the experienced personnel to be used for plant management and maintenance field, and the arrangements it has made with respect to fuel supply.

B. PSNH

PSNH alleges that Stewartstown has not met its burden of demonstrating that it can satisfy the requirements of the Commission and therefore, it is not entitled to receive front-end loaded rates. PSNH contends that according to the criteria set forth in prior Commission orders and the

representations made by Stewartstown in its long term rate petition, the Stewartstown petition was filed prematurely and does not provide the necessary assurances of the long term viability of the project. In particular, PSNH questions Stewartstown's commitment to achieve its proposed commercial on-line date and to remain on-line throughout the rate term in order to repay ratepayers the amount of front-end loading.

PSNH avers that Stewartstown had not begun most of the critical stages of development before it submitted its original long term rate petition. It states that Stewartstown had not obtained an opinion as to the title of its project site, contracted with a general contractor, entered into fuel supply contracts, obtained any necessary regulatory approvals and obtained financing at the time the rate petition was filed. PSNH also argues that it is not appropriate to use the Greenville facility to establish that the Stewartstown project will not encounter problems in its development.

PSNH alleges that Stewartstown's fuel supply is uncertain. It questions the length and reliability of Stewartstown's ten year contract option. PSNH states that the wood supply provides no protection after year ten, the time when PSNH and its ratepayers are most at risk.

PSNH argues that Stewartstown is not entitled to receive rates established in DR 85-215 because Stewartstown's amended rate petition was not filed until August 22, 1986. PSNH states that Stewartstown filed its

Page 63

amended rate petition after the Commission had imposed a temporary suspension in DR 85-215 and that this filing differed "fundamentally" from their original rate petition filed on March 22, 1986. Brief at 33.

Finally, PSNH argues that DR 85-215 rate no longer reflects the best current estimates of avoided costs and therefore should not be granted to Stewartstown. 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 these that do not satisfy the Commission's previously established criteria.

III. Commission Analysis

The issues identified and contested by the parties relate to the timeliness, or maturity, of the rate filing and the eligibility of the project for levelized or front-end loaded rates pursuant to the criteria set forth in DE 83-62. The criteria cited by the Commission in prior Orders to be used as indicia were summarized by the Commission in Docket No. DR 86-39, Re SES Concord Co., L.P., in Report and Order No. 18,358 (71 NH PUC 437).[2(17)] These criteria include, among other things, project life equal to or greater than the rate term and assurances that the level of annual output will be adequately maintained by the facility.

A. Project Maturity.

In the case before us, we find that the project is mature enough to qualify Stewartstown for a long term rate. The Stewartstown proposal involves replicating a nearly complete wood-fired

small power production facility located in Greenville, Maine. This replication has led to the selection of a suitable site for a second wood-fired small power production facility to "reuse the great deal of effort and energy and engineering work that had gone into the design, permitting and construction of the Greenville, Maine wood-fired project." 1 TR 19.

Stewartstown acquired right, title and interest in the West Stewartstown project site on January 20, 1986, before this rate petition was filed. Exh. I, tab 4. This not only reasonably secures a site for the project construction, but also strategically locates the project near an identified and secured fuel supply. Stewartstown has identified a specific type of wood fuel resource for its project and obtained a ten year fuel contract option for two-thirds of the wood fuel required by the plant. Exh. I, tab 2.

Stewartstown has also had an air quality analysis performed (Exh. I, att. 1) which led to the approval of an air resource permit for the project. Appendix A of Stewartstown brief. Stewartstown had a hydrotechnical firm perform a preliminary analysis of the plant site's groundwater favorability (Exh. I, tab 5) and has worked with town officials to identify the options that are available with respect to its water and waste disposal needs. Exh. I, tab 6. It is also in the process of developing, in conjunction with the New Hampshire Solid Waste Commission, an agricultural ash spreading program, and is in the process of securing other required permits from appropriate state agencies.

With respect to financing arrangements, Stewartstown presented letters of interest from lending institutions as well as equity sources (Exh. I, tabs 9-10) and demonstrated that it has considerable experience in the financing of small power production facilities located throughout New England.

Although PSNH questions the maturity of the Stewartstown project alleging that a number of development steps remain to be completed, the Commission has not required that all developmental problems be resolved before a rate petition is filed. 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, constructed and come on-line as proposed. While certain developmental milestones provide indications of project maturity, the methodology and criteria of DE 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.

Developers that petitioned to the Commission in the spring of 1986 for a rate pursuant to DR 85-215 have represented a continuum of the development process. The Commission found that the petitions of Re Pinetree Development Corp., (Pinetree), Docket DR 86-100 et al. and Re Resource Electric Corp. (REC), Docket DR 86-77 were filed prematurely and therefore not entitled to long term rates pursuant to DR 85-2I5. On the other hand, the Commission found that the petition of Re Wormser Engineering Corp., (Wormser), Docket DR 86-1, was filed timely and therefore the developers could reasonably assure the Commission that they could meet their

on-line date. The timing of the filing of the long term rate petition of Stewartstown, is neither as clearly premature as the Pinetree and REC petitions, nor as clearly timely as the Wormser petition and in our judgement represents a borderline case. However, on balance, it is the Commission's view that the Stewartstown project is sufficiently mature to qualify for long term rates pursuant to DR 85-215.

B. Long Term Viability.

A developer must be able to reasonably assure the Commission that the project will produce power at projected levels for the duration of the rate obligation in order to receive front-end loaded rates. We find that Stewartstown has met this burden with respect to the long term technical and operational viability as well as the economic viability of the project.

With respect to the technical and operational viability of the project, Stewartstown has demonstrated that its proposal to replicate the nearly complete Greenville plant will result in a plant with the design life in excess of the twenty-year rate obligation. Stewartstown's proposed engineering firm has experience in the design and engineering of the Greenville facility and with other wood-fired power plants. Furthermore, an independent engineering analysis that endorses the design and engineering philosophy of the Greenville plant provides additional support to the technical and operational viability of the Stewartstown project proposal. The Stewartstown facility will also utilize high quality plant equipment including a boiler configured to burn alternate fuels, making the plant flexible with respect to wood fuel types. Stewartstown has provided additional assurances that the plant will operate efficiently and at targeted availability. Stewartstown will maintain a reserve fund for equipment replacement repair and a spare parts inventory. The reserve fund and parts inventory will complement Stewartstown's maintenance and life extension programs. Stewartstown will also establish minimum operating standards for the plant and a payroll incentive program that are designed to encourage high availability.

Stewartstown has assured the Commission that the personnel that will operate the plant will have the appropriate skill and experience. Stewartstown also has substantial experience in the operation of other small power production facilities in New England.

Regarding the economic viability of the project, the Commission's concerns under front-end loaded rates relate to the escalation of fuel costs and consequently project costs above the front-end loaded rate in the later years, which could thereby endanger Stewartstown's ability to repay the front-end loaded amounts. Stewartstown has provided sufficient assurances that the project is economically viable.

Stewartstown has secured a fuel supply for the first ten years of the project life. It will utilize a boiler design that can accommodate multiple forms of wood fuel, including mill residues and whole-tree chips,

all of which is in abundant long term supply in the vicinity of the proposed site. The flexibility of the boiler to burn a variety of fuels also gives Stewartstown the ability to purchase fuels in accordance with the market situation at any particular time.

Stewartstown's rate structure is designed to allow for escalating prices for fuel beyond the ten

year term of their current fuel supply contract. The Commission agrees with Stewartstown's contention that wood fuel prices are likely to remain more stable into the future, since they are a renewable resource, than the relatively volatile fossil fuel prices are likely to be. Furthermore, since principal and interest payments will not be required after year ten (assuming a ten year debt term) Stewartstown's cash flow would increase after the tenth year in sufficient amounts to accommodate any foreseeable or, within reason unforeseeable, escalation in the cost of fuel for the duration of the rate term. This factor re-enforces Stewartstown's contention that its cash flow after the expiration of its ten year fuel purchase contract will be more than adequate to meet escalating wood fuel costs and other operating costs to the end of the twenty year rate term.

C. Amended Rate Petition

On April 25, 1986, Stewartstown filed an amendment to its rate petition which addressed two concerns which the Commission had expressed in prior Orders concerning other small power producer applications. In Docket DR 86-152, regarding New England Alternate Fuels-Swanzey, the Commission stated that it will not grant rates longer than 20 years to wood/electric facilities because much of the equipment is designed for a 20 year life, thereby requiring substantial new investments to extend plant life beyond the 20th year.[3](18) In the same docket, the Commission also emphasized the importance of projects being able to meet their projected on-line dates.[4](19)

The Commission has traditionally accepted, within reason, amended rate petitions in small power production cases as it has in cases involving other types of public utilities. In this case, Stewartstown seeks to amend its original petition by reducing the requested rate term from 30 years to 20 years and by postponing its proposed online date by one year. In the amendment, Stewartstown did not withdraw its offer to provide a junior lien as security for the front-end loaded rates although the Commission in the past has normally only required such liens for rate terms beyond 20 years. We find the proposed amendment reasonable and in keeping with prior Commission Orders as discussed above. We accordingly accept the amendment as proposed, including Stewartstown's offer of a junior lien.

Based on the above analysis the Commission finds that Stewartstown has demonstrated its eligibility for front-end loaded rates pursuant to DR 85-215.

Our Order will issue accordingly.

ORDER

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

ORDERED, that Stewartstown's petition for a 20 year long term rate for its proposed 13.8 MW wood-fired small power production facility is approved; and it is

FURTHER ORDERED, that the approval of this rate is conditional on the junior lien offered by the petitioner.

By Order of the New Hampshire Public Utilities Commission this eleventh day of February, 1987.

FOOTNOTES

[1]The Greenville project is a wood-fired small power production facility being developed by

Swift River/ Haflsund Company, which is a general partner of the Stewartstown Steam Company, a limited partnership established for the purposes of developing and operating the Stewartstown facility.

[2]Docket No. DR 86-39, Re SES Concord Co., L.P., Report and Order No. 18,358, pp. 10-12 (71 NH PUC 437).

[3]Report accompanying Order No. 18,343, dated July 23, 1986, at 10-11 (71 NH PUC 423).

[4]Id. at 5 et. seq.

==========

NH.PUC*02/13/87*[60377]*72 NH PUC 50*Public Service Company of New Hampshire

[Go to End of 60377]

72 NH PUC 50

Re Public Service Company of New Hampshire

DR 86-295
Supplemental Order No. 18,561

New Hampshire Public Utilities Commission

February 13, 1987

MOTIONS for rehearing the denial of a rate increase by an electric utility to recover certain expenses; denied.

---

1. STATUTES, § 17 — Construction, operation, and effect — Giving effect to entire statute.

[N.H.] The commission declined to rule on the propriety of action by an electric utility, alleged to violate the purpose section of a state statute, because there was no allegation with regard to violation of any particular portion of the act; actions that ran counter to the purpose section of a statute were undoubtedly common, because statutes administered by the commission had many conflicting purposes, which should be dealt with by reading specific provisions of the statutes in pari materia. p. 51.

2. EXPENSES, § 19 — Treatment of particular kinds of expenses — Reasonableness.

[N.H.] A showing merely that a utility incurred reasonable expenses did not mean that any recovery mechanism or rate based on the expenses was just and reasonable; therefore, an electric utility that had made certain discretionary choices with regard to customer billing and the timing and choice of rate actions, which resulted in a higher rate than would have been necessary under different discretionary choices, was not allowed an additional rate increase to recover certain expenses, because the utility did not show the reasonableness of the choices which caused the higher rate, and thus failed to show the reasonableness of its proposed rate. p. 52.

By the COMMISSION:

Report Regarding Post Report and Order Motions

On January 23, 1987 the Consumer Advocate filed a motion for rehearing pursuant to N.H. Rev. Stat. Ann. 541:3 relating to the issue in Order No. 18,527 (72 NH PUC 1) of the payments by Public Service Company of New Hampshire (PSNH) to Pittsfield Power and Light Corporation (PPL) and Thermo Electron Corporation (TEC). On January 26, 1987 PSNH moved for clarification or rehearing pursuant to Sections 365:21 and 541:3 N.H. Rev. Stat. Ann. on the issue in Order No. 18,527 regarding the Company's request of an additional rate increase due to various PSNH discretionary acts. In this Report and the Order attached hereto, the Commission denies the relief requested in the above mentioned motions, but clarifies one sentence in Order No. 18,527.

I. The Consumer Advocate Motion

The Consumer Advocate's Motion does not oppose the action taken by the Commission in its Order No. 18,527 regarding the PSNH payment to PPL and TEC. Instead, the Consumer Advocate advocates that the Commission take additional action on this matter. In particular, the motion states that the Commission should have ruled on the propriety of allowing PSNH to enter into contracts such as the one entered into with PPL and TEC. The Consumer Advocate specifically asks the Commission to rehear the matter and find such actions improper or unlawful. The Consumer Advocate also asks the Commission to request that the US Department of

Justice investigate the anti-trust implications of these PSNH activities.

As page 10 of the Commission's Report and Order No. 18,527 noted, this proceeding was held pursuant to Section 378:3-a N.H. Rev. Stat. Ann. That statute involves a special rate mechanism for a specific area of expenses incurred by an electric utility. Adjustment clauses such as this one have traditionally involved a relatively quick proceeding and fast adjustment. The policy reasons behind these special rate mechanisms are the relative lack of control by the Company over such expenses, the magnitude of such expenses, and the relatively high fluctuation of such expenses. See e.g.: Foy, "Cost Adjustment In Utility Rate Schedules", 13 Vanderbilt Law Review 663, 668-672 (1960).

As the Commission indicated in its Report and Order, there are significant arguments that the payment to PPL and TEC, even if found to be prudently incurred, is not covered by Section 378:3-a. The Commission made no finding on this matter in its Report and Order and makes no finding on that herein. However, the Commission does not believe that it should take actions in this proceeding beyond the appropriate rate adjustment authorized by the specialized rate adjustment mechanism of Section 378:3-a N.H. Rev. Stat. Ann.

[1] The Consumer Advocate does not request rehearing on the Commission's rate action related to the PSNH payment. Instead, the Consumer Advocate raises concerns over various effects or potential effects outside those caused by the rate adjustments in the Commission's

Order. Based on the reasoning of the foregoing paragraph, the Commission declines to consider those concerns within the context of this docket. However, the Commission believes the Consumer Advocate's specific allegations merit discussion.

In his motion, the Consumer Advocate alleges that the PSNH contract is contrary to public policy, and violates the purpose section of the Limited Electrical Energy Producers Act. The Commission finds the Consumer Advocates's argument that the contract is contrary to public policy to be broad and vague. For this reason, the Commission finds it impossible to appropriately respond to this allegation and thus declines to do so. With regard to the allegation that the PSNH action violates the Limited Electrical Energy Producers Act, the Commission finds the Consumer Advocate has made no allegation with regard to violation of any particular portion of the act. Actions which run counter to the purpose section of a statute, the only portion of the Statute which the Consumer Advocate noted, are undoubtedly common. The statutes that the Commission administers have many conflicting purposes which must be dealt with by reading specific provisions of the statutes in pari materia.

The Consumer Advocate also alleges that the PSNH payment to TEC and PPL is anticompetitive and raises "serious anti-trust questions". These allegations do not allege unlawful action and are not sufficiently developed for the Commission to respond to. If the Consumer Advocate desires action in this area, the Commission believes it appropriate for these concerns to be more completely developed.

The Consumer Advocate also raises hypothetical or theoretical future violations of Sections 378:16, 378:18 and 378:21 N.H. Rev. Stat. Ann. The Commission at this time declines to address those hypothetical or theoretical violations by PSNH or any policies related thereto. While the Commission is not necessarily bound by formal legal considerations of ripeness, the Consumer Advocate's filing does not convince the Commission that it should investigate those alleged potential problems at this time.

The Commission further declines to, at this time, contact the US Department of Justice to investigate PSNH's activities. As noted above, the Consumer Advocate's filing lacks specific discussion of anti-trust policy or law. Furthermore, the Consumer Advocate is always free to provide the US Department of Justice with any or all of the information from this docket if he considers such action appropriate.

II. The PSNH Motion

---

[2] In its Motion, PSNH indicates that a sentence on page 13 of the Commission's Report and Order conflicts with other portions of the Commission's Report and Order. The sentence states that:

the evidence in this proceeding indicates that other expenses proposed by PSNH to adjust its ECRM rate are reasonable and allowed for recovery in ECRM.

Taken in the context of the paragraph, the term "other expenses" in that sentence clearly means expenses other than the above discussed PSNH payment to PPL and TEC. The PSNH motion accurately indicates that the Commission's order did not actually provide for recovery of

all those other expenses. PSNH requests that the Commission provide for such recovery in the current or future ECRM periods.

As the Commission order makes clear, the Company made certain discretionary choices with regard to customer billing and the timing and choice of rate actions in Commission Docket No. DR 86-122 which resulted in a higher rate than would have been necessary under different discretionary choices. Because of the lack of evidence showing the reasonableness of those choices, the Commission did not provide for the additional rate increase caused by those discretionary choices. Thus, the portion of the above quoted sentence which says "and allowed for recovery in ECRM" is misleading. Since the Commission did not allow that additional increase related to the discretionary choices, the Commission did not provide for recovery of certain reasonably incurred expenses. Thus, the Commission clarifies that order by eliminating language which states "and allowed for recovery in ECRM" in the above quoted sentence.

The Company makes two arguments indicating that recovery should be provided for in this docket. First, the Company seems to argue that as long as the expenses are indeed reasonable, as the Commission did find, recovery must be provided. Second, the Company argues through quoting various portions of the transcript that the recovery mechanism or billing mechanism was reasonable.

With regard to the first argument, the Company indicates that disallowing those reasonably incurred costs due to the failure to show the reasonableness of the recovery mechanism would unreasonably and unlawfully deny PSNH the opportunity to recover its prudently incurred energy costs. The Commission does not agree. It is the Company's burden to show that what it is proposing constitutes "just and reasonable rates". To simply show that it has incurred reasonable expenses does not mean that any recovery mechanism or rate based upon them is just and reasonable. As is developed in the Commission Order No. 18,527 (72 NH PUC 1) the Company took various choices under which it was impossible to implement the ECRM change under the traditional mechanism on January 1, 1987. This impossibility was a result of several discretionary Company choices. The Company did not put on evidence showing that the other options open to the Company were considered and appropriately rejected. The evidence did indicate that under other options the rate would have been lower and still provided complete recovery. The evidence further showed that under the choices the Company did make the only way the Company could recover certain expenses was by adding an additional increased component to the rate. Since the Company did not show the reasonableness of the choices which caused the higher rate, the Commission found that the Company failed to show the reasonableness of its proposed rates.

The PSNH motion also seems to request the Commission to rule on recovery of these amounts in subsequent ECRM periods. The Commission finds a decision on that issue premature. However, the Commission anticipates that the Company will present the Commission with a request for any underrecovery in this ECRM period at a future ECRM proceeding.

Page 52

Commissioner Aeschliman Concurring Opinion

While I concur with the conclusions of the foregoing report, I believe the Consumer

Advocate has raised a number of issues and allegations in the motion for rehearing that were not raised at the time of the hearing which merit further comment.

The Consumer Advocate contends that the Commission should prevent PSNH from entering into buyout arrangements with other Small Power Producers, Cogenerators or Self-Generators because such action is anti-competitive, is contrary to public policy as expressed in LEEPA (RSA 362-A:1 et seq.) and will eventually increase rates because the utilities and ratepayers will have lost these inexpensive capacity sources. It is important to address each of the reasons for which the Consumer Advocate is requesting Commission action.

First, underlying the contention that buyout arrangements are anti-competitive is a basic misconception about "competition" in the context of a regulated monopoly. It is assumed in the PURPA/LEEPA framework that utilities are monopoly suppliers. By requiring utilities to purchase from independent producers at rates based on the utility's "avoided costs", PURPA and LEEPA attempt to insure that utilities will buy from SPPs or QFs whenever it will reduce their present or future costs.

The capital costs of generating plants already owned by the utility can not be avoided or reduced by purchases from other producers. Consequently, SPPs do not and can not "compete" with the capital costs of Seabrook or any other existing investment in utility generating plant. These "sunk" capital costs can only be avoided by ratepayers through Commission disallowance in a rate case, through Company election not to request cost recovery, or through disallowance for valuation purposes in a bankruptcy.

Consequently, buy out arrangements in the context of LEEPA/PURPA would be "anti-competitive" and contrary to public policy where the Commission has approved a long-term rate. Presumably, the Commission has approved long-term rate filings that it believes are consistent with the mandate of LEEPA/PURPA.[1](20) In the instant case involving Pittsfield and Thermo Electron the Commission had not approved the rate filings. It is difficult to conceive of an instance in which the Commission could approve rate recovery for a buyout of a Commission approved rate order. To the extent that the Company pursued such a policy the Commission could consider this action in a future rate proceeding in making determinations relative to excess capacity.[2](21)

It would also be contrary to the policy objectives of LEEPA/PURPA for PSNH by acquiring the development rights of a project to prevent that power from being available to another utility. The only utility for which it would possibly be in PSNH's interest to prevent a purchase from a SPP is the New Hampshire Electric Cooperative, as purchases from SPPs would reduce the Cooperative's purchases from PSNH. Evidence of such action could potentially be considered in a PSNH rate case relative to excess capacity determinations. The Commission has not been presented with evidence of such a situation occurring and the Consumer Advocate has not cited any authority by which the Commission could prevent PSNH from entering into such a contract. I have previously expressed my concerns about agreements between utilities that may limit SPP development. (See, DF 83-260, Re New Hampshire Electric Co-op., Inc., Opinion of Commissioner Aeschliman, Dissenting in Part, Report and Seventeenth Supplemental Order No. 17,638 at 15 [70 NH PUC 422, 488].)

Competition on the demand side as opposed to the supply side is an entirely different

question, which has nothing to do with rate filings pursuant to PURPA/LEEPA. Customers of PSNH may elect to by-pass the PSNH system for all or part of their purchases by generating their own power (self-generation) or purchasing power from a SPP within the legal constraints of retail sales permitted under LEEPA. (RSA

362A:2-a, Purchase of Output by Private Sector.) PSNH may attempt to meet demand side competition through pricing policies designed to prevent customer by-pass. These pricing policies would require Commission approval either in the context of a rate case or special contract proceeding. Whether the Company will be able to avoid by-pass and remain viable consistent with appropriate regulatory policies and pricing structures is certainly an area to be addressed in the forthcoming financing proceeding. The Consumer Advocate can address these concerns in the context of examining the appropriateness of pricing structures assumed by the Company in developing load forecasts, Pathways 2000 or other plans that may be presented. The Consumer Advocate may also raise these concerns in the rate case relative to the appropriate rate structure to be adopted.

It should be pointed out that while competitive by-pass will benefit those particular consumers that leave the system, those customers remaining on the system will have higher rates as a result. Those customers least able to by-pass are the residential customers represented by the Consumer Advocate. Residential and small business customers could by-pass by in large only in the context of a municipal or county withdrawal from the system. The critical question for these ratepayers is whether because of the threat of commercial and industrial by-pass the Commission will have the ability in a future rate proceeding to protect their interests. The Consumer Advocate may certainly address this critical question in the financing proceeding.

Based upon this analysis, I believe the Consumer Advocate will have the opportunity to address his concerns in other dockets and has not provided the Commission with a basis to take additional action in this proceeding.

SUPPLEMENTAL ORDER

Upon consideration of the foregoing Report Regarding Post Report and Order Motions which is incorporated herein by reference, the Commission orders that:

1. the Consumer Advocate's Motion for Rehearing filed January 23, 1987 is denied, and

2. the PSNH Motion for Clarification and in the Alternative for Rehearing filed January 26, 1987, is denied, and

3. page 13 of the Commission's Report and Order No. 18,527 (72 NH PUC 1) is clarified as discussed in the foregoing Report.

By order of the Public Utilities Commission of New Hampshire this thirteenth day of February, 1987.

FOOTNOTES

[1]If the Commission approves rate filings that exceed the utility's avoided costs, then rates

would be raised not lowered.

[2]The SPP capacity that would have been available absent the buyout could be added to the generating resources of the Company for purposes of calculating excess capacity.

==========

NH.PUC*02/19/87*[60432]*72 NH PUC 67*Wormser Engineering, Inc.

[Go to End of 60432]

72 NH PUC 67

Re Wormser Engineering, Inc.

Additional petitioner: Martin Energy, Inc.

DR 86-1
Order No. 18,576

New Hampshire Public Utilities Commission

February 19, 1987

PETITION for long-term rates for a qualifying cogeneration facility; granted.

COGENERATION, § 33 — Rates — Rate design factors.

[N.H.] Long-term rates and an interconnection agreement between a qualifying cogeneration facility (QF) and an electric utility were approved, because the amount of front-end loading for the proposed twenty megawatt QF project did not exceed the amount of front-end loading represented by a 9 MW project, the discount proposed by the QF was sufficient to offset the additional risk imposed by a 20 MW project in contrast to a 9 MW project, the net present value was less than that available pursuant to a prior decision regarding long term rates for small energy producers and cogenerators, and the rates requested in the latter years of the petition were below those previously approved.

By the COMMISSION:

ORDER

WHEREAS, 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, Docket No, DE 83-62, 69 NH PUC 352, 61 PUR4th 132 (1984) (DE 83-62) and Docket No. DR 85-215, 71 NH PUC 753, 69 PUR4th 365 (1985) (DR 85-215); and

WHEREAS, following hearings on March 12, April 18, June 2 and June 20, 1986, the Commission by Second Supplemental Order No. 18,460, (71 NH PUC 617), allowed Wormser to amend its petition to conform to one of three options:

1. a 20 year long term levelized rate for a 9 MW project,

2. a non-levelized rate for a 20 MW project,

3. a 20 year long term rate for a 20 MW project incorporating an amount of frontend 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

WHEREAS, on January 7, 1987, Wormser submitted a petition for a long term rate in conformance with option 3; and

WHEREAS, having reviewed the petition the Commission finds that the amount of front-end loading for the proposed 20 MW project does not exceed the amount of front-end loading represented by a 9 MW project, that the net present value is less than that available pursuant to DR 85-215 and that the rates requested in the latter years of the petition are below those approved in Re Small Energy Producers and Cogenerators, Docket No. DR 86-134, Report and Order No. 18,334 (July 10, 1986) (71 NH PUC 408); and

WHEREAS, the Commission finds that the discount proposed by Wormser is sufficient in its judgment to offset the additional risk imposed by a 20 MW project in contrast to a 9 MW project, and

WHEREAS, the filing is consistent with DE 83-62 and DR 85-215 in all other respects; it is therefore

ORDERED, that Wormser's petition for a rate order approving its interconnection agreement with Public Service Company of New Hampshire and the rates set forth on the long term worksheets is approved.

By order of the New Hampshire Public Utilities Commission this nineteenth day of February, 1987.

==========

NH.PUC*02/20/87*[60433]*72 NH PUC 68*Mountain High Water Company

[Go to End of 60433]

72 NH PUC 68

Re Mountain High Water Company

DE 87-9
Order No. 18,577

New Hampshire Public Utilities Commission

February 20, 1987

PETITION by a water utility for authority to charge temporary rates; granted.

RATES, § 630 — Temporary rates — Water utility.

[N.H.] A water utility was authorized to charge temporary rates for water service presently furnished to certain customers, because the utility for some period had provided service at no charge, the water distribution system was still under construction in order to supply the total area to be served, and the commission was satisfied that the temporary rates would be for the public good.

By the COMMISSION:

ORDER

WHEREAS, Mountain High Water Company, a water public utility pursuant to the provisions of RSA 362:4 and operating under the jurisdiction of this Commission, by a petition filed December 29, 1986 seeks authority under RSA 378:27, to charge temporary rates for water service now being furnished to certain customers in Bartlett, N.H.; and

WHEREAS, Mountain High has for some period been furnishing water service at no charge; and

WHEREAS, the water distribution system is still under construction in order to supply the total area to be served; 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 March 12, 1987; and it is

FURTHER ORDERED, that Mountain High effect said notification by distributing a copy of this order to each customer unit now being served, such distribution to be no later than February 27, 1987 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 Mountain High be authorized pursuant to RSA 378:27, to charge the annual rate of $213.77 for water service provided to its customers without provision for recoupment when permanent rates are sought, and it is

FURTHER ORDERED, that such authority shall be effective on March 19, 1987 unless a request for hearing is filed with the Commission as provided above or unless the Commission orders otherwise prior to the effective date; and it is

FURTHER ORDERED, that such authority shall cease on July 31, 1987, at which time, except for due cause shown, Mountain High shall file a petition for franchise and permanent rates in this designated service area.

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

February, 1987.

==========

NH.PUC*02/23/87*[60434]*72 NH PUC 69*Walnut Ridge Water Company, Inc.

[Go to End of 60434]

72 NH PUC 69

Re Walnut Ridge Water Company, Inc.

DR 86-194
Order No. 18,579

New Hampshire Public Utilities Commission

February 23, 1987

ORDER establishing rates and metered rate schedule for a water utility.

---

1. EXPENSES, § 89 — Rate case expense — Water utility.

[N.H.] The commission found that the rate case expense requested by a water utility was excessive, and therefore reduced the rate from $75 to $40 per hour, an amount that was just and reasonable because the reduced expense equaled the other management charges applied. p. 69.

2. RATES, § 595 — Water — Metered rate schedule.

[N.H.] In a water rate case, the commission accepted (1) a stipulation agreement providing for a rate of return of 10% and rate increase of 51% on an annual basis, and (2) a metered rate schedule constructed to recover the fixed charges of depreciation and taxes with no water allowance and to recover the remaining operating expenses through a consumption charge for all water used. p. 69.

APPEARANCES: Carol Rolf, Esquire for Walnut Ridge Water Company, Inc.; Martin C. Rothfelder, Esquire, General Counsel for the Commission and Staff.

By the COMMISSION:

REPORT

[1,2] On June 24, 1986, Walnut Ridge Water Company, Inc. (Walnut Ridge), a duly organized utility with a franchise to serve water within the town of Atkinson, New Hampshire, filed tariffs proposing an increase in permanent rates. Said tariffs would increase Walnut Ridge's revenues by $24,800 or 63%, on an annual basis. On August 1, 1986 the Commission suspended said tariffs and scheduled a prehearing conference on October 9, 1986, to address procedural matters. Following the prehearing conference, and hearing subsequent thereto, the Commission issued its Order No. 18,454 (71 NH PUC 609) approving 1) temporary rates and 2) a procedural

schedule wherein the issues contained in Walnut Ridge's filing could be adjudicated. The Commission granted temporary rates at Walnut Ridge's current rate level effective October 23, 1987.

On October 20, 1986 Walnut Ridge revised its proposed tariff pages. The revised tariff pages decreased the original request by $7,928 to a new increase in revenues of $16,872, or 42% on an annual basis. Subsequently, on December 8, 1986, Staff filed testimony proposing an increase of $15,155, or 38% on an annual basis.

On January 5, 1987 the Commission held a hearing to consider the merits of Walnut Ridge's requested permanent rate increase. During this hearing staff and 10Walnut Ridge presented a stipulation which proposed an increase of $20,348, or 51% on an annual basis. In support of the stipulation staff presented two witnesses and Walnut Ridge presented one witness. In addition, 5 exhibits were provided. These were:

1) The Stipulation;

2) Prefiled Testimony of Daniel D. Lanning;

3) Prefiled Testimony of Stephen J. Noury and Peter A. Lewis;

4) The petition for rate increase filed by Walnut Ridge, June 24, 1986; and

5) Walnut Ridge's Response to Staff Data Requests.

Staff witness Lanning presented the stipulation and provided an explanation concerning the variances between the revenue

Page 69

requirement in his prefiled testimony and that found in the stipulation. The Staff witness explained these differences as:

1) An update of the test year from an average year ending December 31, 1985 to an average year ending September 30, 1986;

2) The amortization of certain expenses which were extraordinary due to an accelerated maintenance program during the updated test year. Specifically, these were:
a) Amortization of $5,439 over three years related to nonrecurring maintenance expense during the test year.
b) Amortization of $3,961 over three years applicable to extraordinary superintendent expenses;

3) A proforma adjustment to property taxes in the amount of $618. This proforma relates to increases in tax expense not more than 12 months beyond the test year as established by Commission precedent. (DR 85-214 Report and Order No. 18,365); and

4) Cash working capital in an amount equal to two and one half months of the proformed operation and maintenance expense (Walnut Ridge bills its customers quarterly in arrears).

The Staff witness further explained the difference between Walnut Ridge's original filing, a $24,800 increase, and its revised filing, a $16,872 increase. According to Staff witnesses Lanning and Lessels, the decrease in revenue deficiency is related solely to the elimination of

costs incurred in developing a new well source that was subsequently abandoned prior to being used and useful by the water company. The development of this new source was in response to a requirement of the New Hampshire Water Supply and Pollution Control Commission, that the company resolve an alleged water quality problem in its existing supply sources. Treatment of the existing sources has, at this time, eliminated any water quality problem. This reduced the originally filed rate base by $88,348 and in turn reduced the revenue requirement. Recovery of this cost was considered to be a violation of RSA 378:30 a. Public Utility Rate Base Exclusions. See Re Public Service Co. of New Hampshire, 125 N.H. 46, 60 PUR4th 16, 480 A.2d 20 (1984).

The final rate base proposed in the stipulation (Ex. 1) is $106,527 based on the average of beginning and ending balances in the test year (9/30/86). The proforma test year net operating income is ($9,695), an operating loss. The rate of return requested is 10%.

Rate Case Expense

The stipulation presented by the parties included a mechanism to recover rate case expense by application of a surcharge over a two year period.

Subsequent to the hearings, Walnut Ridge submitted a list detailing $6,833.30 of rate case expense. These costs amortized over a two year period would be $3,416.65 per year.

Upon review the Commission finds the charge for "principal" in attachment A is excessive. We, therefore, will revise the rate from $75 per hour to $40 per hour. This reduces the rate case expense from $6,833.30 to $6,378.30. The Commission believes the revision provides a just and reasonable charge because it equals the other management charges applied.

In the past, the Commission has made adjustments to rate case expenses 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.; DR 85-2, Re Pennichuck Water Works, Inc., Report and Supplemental Order No. 18,294, 71 NH PUC 351 (1986). In each of these the Commission had determined that certain costs were inappropriate and adjusted

such accordingly. If the Commission finds that a cost in rate case expense is undue in amount, we may reduce the requested expense accordingly. New Hampshire v. Hampton Water Works Co., 91 N.H. 278, 39 PUR NS 15, 19 A.2d 435 (1941). Pursuant thereto we will adjust the rate case expense.

Commission precedent has allowed a surcharge of rate case expense over a two year period. See Re Hudson Water Co., 66 NH PUC 303 (1981); Re Mountain Springs Water Co., 66 NH PUC 589 (1981); Re Lakes Region Water Co., Inc., 68 NH PUC 154 (1983). We find just cause to continue this precedent in the instant docket.

Rate Structure

The metered rate schedule proposed in this docket eliminates the 500 cubic feet allowed with payment of the minimum charge. This charge is now constructed to recover the fixed charges of depreciation and taxes with no water allowance. The remaining operating expenses are recovered through a consumption charge for all water used. The rate structure then becomes:

Quarterly Minimum
Charge: $8.00
All Consumption $2.05/100 cubic feet

This Commission has approved meter rate schedules structured in this manner in DE 85-149 Bricketts Mill Water Co., DR 84-267 Lancaster Farms Water Co., DR 84-314 Lakes Region Water Co., and DR 83-373 Wentworth Cove Water Co. We accept this metered rate structure as fair and reasonable and accept the stipulation agreement as presented by staff and agreed to by staff and the water company.

Our order will issue accordingly.

ORDER

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

ORDERED, that the suspension of tariff NHPUC No. 3, Walnut Ridge Water Company, as ordered in Order No. 18,357, is hereby rescinded; and it is

FURTHER ORDERED, that Walnut Ridge Water Company, Inc., shall file three signed, with seven additional, copies of tariff NH PUC No. 3, including a metered rate schedule as specified in this Report, bearing the effective date of October 23, 1986 and the notation "authorized by NHPUC Order No. 18,579 (72 NH PUC 69) in case No. DR 86-194, dated February 23, 1987"; and it is

FURTHER ORDERED, that Walnut Ridge Water Company, Inc., be and hereby is, authorized to recover $6,378.30 in rate case expenses through a surcharge to be applied to each quarterly billing for a two year period, beginning with those rendered for the first quarter of 1987; and it is

FURTHER ORDERED, that Walnut Ridge Water Company file a calculation showing the amount of revenue to be recouped, that represents the difference between the authorized permanent and temporary rates granted in this docket.

By order of the Public Utilities Commission of New Hampshire this twenty-third day of February, 1987.

==========

NH.PUC*02/24/87*[60436]*72 NH PUC 71*Gale R. Harroff

[Go to End of 60436]

72 NH PUC 71

Re Gale R. Harroff

DE 87-17
Order No. 18,580

New Hampshire Public Utilities Commission

February 24, 1987

PETITION for license to install and maintain an electric power line over public waters; granted.

ELECTRICITY, § 7 — Wires and cables — Authorization for transmission line.

[N.H.] The owner of a one-quarter acre island was authorized to install and maintain an overhead electrical power line over public waters to

Page 71

the island, because an electric utility had removed the existing line for safety reasons two years earlier, electric service was needed in order to sell the property, and the construction, ordered to meet applicable safety standards, was in the public good.

By the COMMISSION:

ORDER

WHEREAS, On January 30, 1987, Mr. Gale R. Harroff filed with this Commission a petition seeking a license pursuant to RSA 371:17 to install and maintain an overhead, electric power line across a section of the Contoocook River for approximately 200 feet to a cottage on an island, which has no formal name, off of Old Country Road in Rindge, New Hampshire; and

WHEREAS, approximately two years ago, Public Service Company of New Hampshire (PSNH) removed the existing power line to the island for safety reasons; and

WHEREAS, how PSNH is in agreement to provide service to a riser pole located at the end to Old Country Road on property owned by the Town of Rindge, New Hampshire; and

WHEREAS, Barbara E. Harroff, Wife of Gale R. Harroff, and owner of this onequarter acre island now requires electric service to the island in order to sell the island property; and

WHEREAS, this Commission finds such construction to be in the public good; and

WHEREAS, the public should be offered the 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 March 10, 1987; and it is

FURTHER ORDERED, that the petitioner effect said notification by publication of this order once in The Union Leader, such publication to be no later than March 3, 1987 and designated in affidavits to be made on a copy of this order and filed with this office; and it is

FURTHER ORDERED, NISI that the petitioner be authorized, pursuant to RSA 371:17 et seq to install and maintain electric lines over the public waters of the Contoocook River to the island owned by Barbara E. Harroff approximately 200 feet from the end of Old Country Road in Rindge, New Hampshire; and it is

FURTHER ORDERED, that all construction meet requirements of the National Electrical Safety Code and all other applicable safety standards; and it is

FURTHER ORDERED, that such authority shall be effective 20 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 twenty-fourth day of February, 1987.

==========

NH.PUC*03/02/87*[60437]*72 NH PUC 72*Nuclear Emergency Planning

[Go to End of 60437]

72 NH PUC 72

Re Nuclear Emergency Planning

DE 87-25
Order No. 18,582

New Hampshire Public Utilities Commission

March 2, 1987

APPROVAL of assessment against an electric utility of estimated costs of preparation and implementation of a nuclear emergency response plan.

ATOMIC ENERGY — Radiological emergency response planning — Cost assessments — Electric utility.

[N.H.] The commission approved an assessment against an electric utility of the estimated costs of the continued preparation and implementation of a radiological emergency response plan for a nuclear power plant, based on the

commission chairman's determination that the costs were related to the preparation of a nuclear emergency response plan and the provision of equipment and materials necessary to implement the plan.

By the COMMISSION:

REPORT

On February 18, 1987, 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, of the estimated costs of the continued preparation and implementation of the radiological emergency response plans for the Seabrook Station Nuclear Power Plant. The request totals $789,635 and includes the following costs:

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

Personnel Services $109,645
Current Expenses 64,710
Transfer to Gen. Services 15,500
Equipment 34,870
Indirect Costs 21,866
Audit Set Aside 984
Transfer to Other State Agencies 150,000
Other Personnel Services 230,819
Benefits 22,205
In-State Travel 7,612
Out-of-State Travel 13,741
Consultants 125,430
Local Training Costs 33,960

TOTAL $831,342

Less Balance 07/01/86 $(41,707)

TOTAL ASSESSMENT $789,635
```

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

107-B:1 Nuclear Emergency Response Plan.

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

107-B:3 Assessment.

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

The chairman's function under this chapter is a limited one. In Re Hollingsworth, 122 N.H. 1028 (1982), the New Hampshire Supreme Court upheld the chairman's finding that the statute did not provide the chairman with authority to conduct an independent evaluation of Civil Defense's cost data or to challenge its scope or amount. The Court stated at p. 1033 as follows:

We agree with the chairman's interpretation of his limited role under RSA chapter 107-B (Supp. 1981). The delegation of legislative authority to the chairman in that statute is extremely narrow and almost ministerial in nature. Under RSA 107-B:1 I (Supp. 1981), the only independent evaluation of requested assessments that the PUC chairman is authorized to make is whether the cost is one of "preparing the plan and providing equipment and material necessary to implement it." The chairman made this evaluation and disallowed those charges relating to the

CDA's personnel expenses for overseeing the formulation of the evacuation plan. Once the chairman authorized the assessment, his only remaining function was to assess the cost

proportionately among all utilities that have applied for an operating license for the Seabrook plan. See RSA 107-B:3 (Supp. 1981). (Emphasis added.)

As Chairman, I therefore must determine whether the costs contained in the request are related to "preparing the plan and providing equipment and materials necessary to implement it". The preparation of a nuclear emergency response plan began in 1981 after the passage of RSA 107-B. The following reports and orders have been issued pursuant to RSA 107-B:

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

Order No. 15,412 DE 81-304
 January 5, 1982

Order No. 17,078 DE 84-117
 June 18, 1984

Order No. 17,947 DE 85-380
 November 14, 1985

S. Order No. 18,024 DE 85-380
 December 27, 1985

Order No. 18,510 DE 86-306
 December 18, 1986
```

According to Civil Defense's request and the data submitted therewith, the plan is still being prepared and will not be complete until the required federal regulatory approvals are secured and an operating license secured. The process necessary to effect the issuance of an operating license involves a series of approvals from various federal agencies as follows:

1. Recommendation of approval of formally submitted State Radiological Emergency Response Plans by the Federal Emergency Management Agency (FEMA) to the Nuclear Regulatory Commission (NRC).

2. Concurrence between NRC and FEMA staff of adequacy and effectiveness of State Radiological Emergency Response Plans developed by the NHCDA and a submission by the NRC staff to the Atomic Safety and Licensing Board as one determinant in the issuance of an operating license.

Civil Defense submits that the above-stated costs represent the personnel and equipment costs necessary to complete the preparation of the Plan and obtain the requisite approvals, as well as costs necessary to implement the Plan.

Pursuant to RSA 107-B:1, I have reviewed Civil Defense's request and supporting data. I find that the costs contained therein relate to preparing the plan and providing equipment and materials necessary to implement it. As stated above, these costs include both equipment and personnel costs. I therefore will approve the assessment of $789,635.

Finally, it should be noted that my findings herein were made without a public hearing. There is no hearing requirement in RSA 107-B:1.

My Order will issue accordingly.

ORDER

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

ORDERED, that I hereby certify that $789,635 be assessed against New Hampshire Yankee Division of Public Service Company of New Hampshire, pursuant to RSA 107-B.

By Order of the Public Utilities Commission of New Hampshire this second day of March, 1987.

==========

NH.PUC*03/05/87*[60438]*72 NH PUC 75*Texas Eastern Corporation

[Go to End of 60438]

72 NH PUC 75

Re Texas Eastern Corporation

Additional parties: Petrolane Gas Service, Inc., Petrolane Gas Service Limited Partnership, and Petrolane Utilities, Inc.

DE 87-29
Order No. 18,583

New Hampshire Public Utilities Commission

March 5, 1987

JOINT petition for transfer of the issued and outstanding shares of a gas distribution utility; granted.

CONSOLIDATION, MERGER, AND SALE, § 22 — Grounds for approval — Gas distribution utility.

[N.H.] The transfer of all issued and outstanding shares of a gas distribution utility to an affiliated company was approved, based on commission findings that the retail gas utility business would continue to operate in substantially the same manner, with control of day-to-day operations remaining with the employees currently responsible; that the transaction was consistent with the total corporate development and would facilitate the conduct of future business operations; and that the acquisition would assure continued just and reasonable service to customers.

By the COMMISSION:

ORDER

WHEREAS, on February 26, 1987, Texas Eastern Corporation ("Texas Eastern"), Petrolane Gas Service, Inc. ("Petrolane Gas Service"), Petrolane Gas Service Limited Partnership ("Operating Partnership"), and Petrolane Utilities, Inc. ("Petrolane Utilities") filed with this Commission a joint petition for approval to the extent of the Commission's authority under New Hampshire Revised Statutes Annotated, Title XXXIV:

(I) to confirm the transfer of all of the issued and outstanding shares of PetrolaneSouthern New Hampshire Gas Company, Inc. ("Petrolane-Southern") by Texas Eastern to Petrolane Gas Service;

(II) to approve the transfer of all of Petrolane-Southern's issued and outstanding shares by Petrolane Gas Service to Petrolane Incorporated ("Petrolane") and then to the Operating Partnership; and

(III) to approve the transfer of all of Petrolane-Southern's issued and outstanding shares by the Operating Partnership to Petrolane Utilities; and

WHEREAS, petitioners aver that Petrolane is changing its domestic liquefied petroleum gas (LP gas) business from a corporate to a limited partnership form; and

WHEREAS, petitioners aver that Petrolane-Southern will continue to operate its retail gas utility business in substantially the same manner it has been operating, and that the control of the day-to-day operations will remain with the present employees who are currently responsible for the gas utility business; and

WHEREAS, petitioners further aver that this transaction is consistent with the total corporate development of Texas Eastern and its approval will facilitate the orderly conduct of Texas Eastern's future business operations; and

WHEREAS, upon investigation, the Commission is satisfied that the acquisition will assure continued just and reasonable service to customers of Petrolane-Southern, and is in the public good; it is hereby

ORDERED NISI, that pursuant to, inter alia, RSA 374:30, the petition of Texas Eastern Corporation, Petrolane Gas Service, Inc., Petrolane Gas Service Limited Partnership, and Petrolane Utilities, Inc., for the aforesaid approvals be, and hereby is, approved; and it is

FURTHER ORDERED, that said petitioners notify all persons desiring to be heard or to submit comments or exceptions to this Order NISI by causing an attested copy of this Order NISI to be published once in

Page 75

a newspaper of general circulation in that portion of the State in which operations are proposed to be conducted, said publication to be made on or before March 7, 1987, said publication to be designated in an affidavit to be made on a copy of this Order NISI and filed with this office; and it is

FURTHER ORDERED, that any person may file with the Public Utilities Commission, 8 Old Suncook Road, Concord, New Hampshire, 03301 a request for a hearing or comments or exceptions to the Petition no later than March 12, 1987; and it is

FURTHER ORDERED, that this Order NISI shall become effective on March 12, 1987 unless the Commission orders otherwise in a supplemental order issued prior to the effective date.

By order of the Public Utilities Commission of New Hampshire this fifth day of March, 1987.

==========

NH.PUC*03/06/87*[60439]*72 NH PUC 76*Town of Meredith

[Go to End of 60439]

72 NH PUC 76

Re Town of Meredith

DE 87-1
Order No. 18,584

New Hampshire Public Utilities Commission

March 6, 1987

AUTHORITY granted to construct and maintain sewer and water lines under state-owned railroad property.

CERTIFICATES, § 76 — Factors affecting grant — Public good.

[N.H.] A petition filed by a town for license to construct and maintain sewer and water lines under state-owned railroad property was approved, because the commission found the construction to be in the public good.

By the COMMISSION:

ORDER

WHEREAS, on January 8, 1987, the Town of Meredith, New Hampshire, filed with this Commission its petition seeking license for the construction and maintenance of sewer and water lines under railroad property of the State of New Hampshire; and

WHEREAS, this Commission finds such construction in the public good; and

WHEREAS, the public should be offered the opportunity to respond in support or in opposition thereto; it is

ORDERED, that all persons interested in responding to this petition be notified that they may submit comments or file a written request for hearing on this matter before this Commission no later than March 25, 1987; and it is

FURTHER ORDERED, that the petitioner effect such notification by publication of this order once in The Union Leader no later than March 13, 1987, and designated in an affidavit to be made on a copy of this order filed with this office; and it is

FURTHER ORDERED, NISI that the petitioner be, and hereby is, authorized pursuant to RSA 371:17 et seq to construct and maintain sewer and water lines under State-owned railroad property in the Waukewan Lake/Cotton Hill Road area of Meredith, New Hampshire, as depicted in the cited petition and its accompanying Drawings Nos. 2, 3, 5, 6 and 11, Project No. 85-2187; and it is

FURTHER ORDERED, that all construction meet applicable safety and other codes; and it is

FURTHER ORDERED, that such authority shall be effective 20 days from the date of this order, unless a hearing is requested as provided herein, or the Commission directs prior to the effective date.

By order of the Public Utilities Commission of New Hampshire this sixth day of March, 1987.

==========

NH.PUC*03/06/87*[60440]*72 NH PUC 77*New England Telephone and Telegraph Company

[Go to End of 60440]

72 NH PUC 77

Re New England Telephone and Telegraph Company

DE 87-21
Order No. 18,585

New Hampshire Public Utilities Commission

March 6,1987

ORDER authorizing construction of aerial telephone plant across public waters.

CERTIFICATES, § 123 — Telephone — Factors affecting grant — Agreement of parties.

[N.H.] A local exchange telephone carrier was authorized to construct and maintain an aerial telephone plant across public waters, because the existence of an electric crossing, which allowed installation of the telephone plant on existing poles, implied agreement of all parties, and because the crossing would not adversely affect public rights on the waters.

By the COMMISSION:

ORDER

WHEREAS, on February 13, 1987 the New England Telephone & Telegraph Company (NET) filed with this Commission its petition under RSA 371:17 seeking license for the construction and maintenance of aerial telephone plant across the Androscoggin River in Errol, New Hampshire; and

WHEREAS, said crossing is described as originating at Pole Tel 194/586 located on State Highway No. 16 in Errol, New Hampshire, and terminating at Pole Tel 194/586-1 on property of the James River Corporation; and

WHEREAS, said plant is to provide telephone service to Arthur Charland from the NET Errol Exchange; and

WHEREAS, this telephone plant will be installed on existing poles which support electric power lines of the Public Service Company of New Hampshire (PSNH); and

WHEREAS, NET asserts that this crossing will not affect adversely the public rights on said waters; and

WHEREAS, the existence of the PSNH electric crossing implies agreement of all parties per RSA 371:20; it is

ORDERED, that NET be, and hereby is, granted license for the construction and maintenance of aerial telephone plant across the Androscoggin River as described herein and further depicted on maps and drawings on file with this Commission; and it is

FURTHER ORDERED, that all construction will be according to provisions of the National Electric Safety Code.

By order of the Public Utilities Commission of New Hampshire this sixth day of March, 1987.

==========

NH.PUC*03/06/87*[60441]*72 NH PUC 77*Industrial Cogenerators Corporation

[Go to End of 60441]

72 NH PUC 77

Re Industrial Cogenerators Corporation

DR 86-108
Supplemental Order No. 18,586

Re American Cogenics

DR 86-119
Supplemental Order No. 18,586

Re Enesco Merrimack Cogeneration, Inc.

DR 86-121
Supplemental Order No. 18,586

Re Kearsarge Power and Light

DR 86-124
Supplemental Order No. 18,586

Re Plaistow Power and Light

DR 86-126
Supplemental Order No. 18,586

Re A. Johnson Cogen, Inc.

DR 86-132
Supplemental Order No. 18,586

Page 77

Re Cygna Energy Services

DR 86-133
Supplemental Order No. 18,586

New Hampshire Public Utilities Commission

March 6, 1987

REPORT and order granting motions for rehearing on procedural grounds.

---

1. COGENERATION, § 25 — Rates — Avoided costs — Generally — Classes of qualifying facilities — Differences between.

[N.H.] Neither the Public Utility Regulatory Policies Act (PURPA) of 1978 nor New Hampshire statute prohibits the commission from giving priority to non-fossil fuel qualifying facilities (QFs) over fossil fuel QFs by assigning non-fossil fuel QFs to a higher avoided cost rate block. The commission found that (1) the legislative history of both statutes indicates a desire to decrease dependence on fossil fuels; and (2) avoided cost is a rate based not on cost but value, and the value of fossil fuel QF electricity to the utility and society is lower than the value of non-fossil fuel QF electricity. p. 79.

2. ORDERS, § 10 — Modification — Differing classes of orders — Rules and adjudicative orders.

[N.H.] The commission was not required to follow the statutorily prescribed procedure for amending rules when it issued a rule that dealt with the same subject matter as a prior order but the prior order was the outcome of an adjudicative proceeding and hence not a rule, a regulation or other statement of general applicability that purported to govern the practices of the other regulated electric utilities within the state. p. 80.

3. PROCEDURE, § 33 — Rehearings and reopenings — Grounds for granting — Official notice of information — Requirement of notification thereof.

[N.H.] A motion for the rehearing of a commission case will be granted where state statute

requires that the commission notify the parties when it takes official notice of information and where the parties were not given an opportunity to address the information before the commission and identify deficiencies in the commission's analysis. p. 81.

By the COMMISSION:

REPORT

On January 7, 1987 the Commission issued Report and Order No. 18,530 (72 NH PUC 8) (Order 18,530) in these dockets which, inter alia, denied the long term rate petitions of Industrial Cogenerators Corporation, American Cogenics, Enesco Merrimack Cogeneration, Inc., Kearsarge Power & Light, Plaistow Power & Light, A. Johnson Cogen, Inc., and Cygna Energy Services (jointly referred to as Petitioners). On January 27, 1987 Motions for Rehearing were filed by Industrial Cogenerators Corporation, American Cogenics, the Consumer Advocate and the Campaign for Ratepayer Rights (CRR).[1(22)] Public Service Company of New Hampshire responded to each of the Motions for Rehearing on February 26, 1987. After due consideration, we will grant the Motions in part and deny the Motions in part.

In general, the Motions for reconsideration raise four broad issues: 1) whether the Commission erred in characterizing or relying on the language of its order in Re Public Service Co. of New Hampshire, DF 84-200, Report and Ninth Supplemental Order No. 17,558 (April 18, 1985) (70 NH PUC 164, 66 PUR4th 349) and Report and Fifteenth Supplemental Order No. 17,939 (November 8, 1985) (70 NH PUC 886) (hereafter referred to as DF 84-200); 2) whether the Public Utility Regulatory Policies Act of 1978, 16 U.S.C. §824a-3 et seq. (PURPA) and the Limited Electrical Energy Producers Act, RSA 362-A:1 et seq. (LEEPA) allow discrimination based upon fuel types; 3) whether the methodology established by Re Small Energy Producers and Cogenerators, DE 83-62, 69 NH PUC 352, 61 PUR4th 132 (1984) (hereafter referred to as DE 83-62) and Re Small Energy Producers and

Cogenerators, DR 85-215, Report and Order No. 17,838 (September 5, 1985) 70 NH PUC 753, 69 PUR4th 365 (hereafter referred to as DR 85-215) has been improperly amended by Order 18,530; and 4) whether the procedure used by the Commission was consistent with due process requirements. We shall address each of these broad issues in turn. To the extent that an issue raised in any of the Motions for Rehearing is not addressed herein, it will be denied.

Reliance on DF 84-200

The Movants claim that the Commission did not accurately characterize its findings in DF 84-200 and that it was improper for the Commission to rely upon those findings. After review, we have decided to amend Order 18,530 to eliminate all reference to DF 84-200. See e.g., Order 18,530, Report at 6 (First full paragraph and footnote 1) and 9 ("... and our findings in DF 84-200."). The references were intended as dicta only and were not meant to indicate that the Commission relied upon its findings in DF 84-200 as a basis of its decision in Order 18,530. Review of the Motions for Rehearing lead us to conclude that the DF 84-200 dicta generated

needless confusion that clouded the real issues raised in these dockets. Thus, the elimination of the language pertinent to DF 84-200 will ensure that the parties have an accurate understanding of our rationale in Order 18,530.

PURPA and LEEPA

[1] The Movants claim that PURPA and LEEPA does not authorize the Commission to establish two classes of Qualifying Facilities (QFs) — fossil fuel based QFs and nonfossil fuel based QFs — and treat each differently. We disagree.

In order to present the parties with an accurate understanding of the Commission's rationale, it is necessary to set forth the implicit factual findings in Order 18,530.[2](23) Those findings are:

1. The avoided cost methodology in DE 83-62 and DR 85-215 are based in part on Public Service Company of New Hampshire's (PSNH) PROSIM production simulation methodology.

2. PROSIM is based on an economic dispatch methodology; i.e., generation dispatch priorities run from the least expensive to the most expensive sources of electricity on a variable cost basis.

3. Avoided cost is based on PSNH's ability to avoid costs it would incur but for the purchase from the QF, see 18 C.F.R. §292.101(b)(6).

4. Given the utilization of an economic dispatch model, the costs which can be avoided decrease as more QF capacity is added.

5. The point where avoided cost differences become significant occurs at or about the point where 200 MW of QF capacity is included.

6. The two classes of QFs — fossil fuel and non-fossil fuel — both offer at least 200 MW of capacity.

7. Approval of rates for all offered capacity will result in QF rates that are above avoided cost with associated economic burdens on ratepayers.

On the basis of the above, it is apparent that the Commission is confronted with a situation (unanticipated at the time of DE 83-62 or DR 85-215) where priorities must be established among QFs to ensure that ratepayers are not required to subsidize QFs by being required to pay rates that are above avoided cost. Thus, the basis of the issue is economic. It cannot be disputed that PURPA and LEEPA provide for the establishment of economic priorities in that

both statutes adopt the avoided cost standard for QF purchases. See e.g., American Paper Institute v. American Electric Power Service Corp., 461 U.S. 402, 52 PUR4th 329, 76 L.Ed.2d 22, 103 S.Ct. 1921 (1983); PURPA §210; 18 C.F.R. §292.304; RSA 362-A:4. However, neither statute provides explicit direction on how state regulatory agencies should proceed when confronted with several types of QF capacity each of which ceteris paribus could allow a purchasing utility to avoid a certain level of costs per kwh, but when combined allow a purchasing utility to avoid a lower level of costs per kwh. This lack of explicit direction is consistent with the great latitude afforded state regulatory decision-making provided by PURPA.

See e.g., 18 C.F.R. §292.401. While no explicit guidance is provided, it cannot be denied that implicit guidance is provided through the articulation of legislative policies. In fulfilling its function of maintaining rates at the avoided cost level, it is appropriate for the Commission to rely upon the general legislative policy of the statutes as a basis for establishing priorities. PURPA §2, 16 U.S.C. §2601 sets forth the Congressional findings of PURPA including, inter alia, the need for the development of more efficient and renewable resources to generate electricity. The legislative history of these findings is replete with analysis of the need to decrease dependence on fossil fuels. See e.g., Federal Energy Regulatory Commission v. Mississippi, 456 U.S. 742, 750, 47 PUR4th 1, 5, 72 L.Ed.2d 532, 541 102 S.Ct. 2126 (1982) ("Congress believed that the increased use of these [small power production and cogeneration] sources of energy would reduce the demand for traditional fossil fuels."). The PURPA policy is entirely consistent with the General Court's declaration of purpose in LEEPA, RSA 362-A:1 which provides:

> 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.

(Emphasis supplied). Given these clear statements of legislative policy, it is entirely consistent with the statutes to establish priorities between two classes of QFs — fossil fuel based and non-fossil fuel based — each of which could alone, but not in combination, fill the highest marginal (or avoided) cost block.

We recognize that PURPA and LEEPA include fossil fuel based facilities within the definition of QF. See e.g., 18 C.F.R. §292.101(b)(1); RSA 362-A:1-a. Those fossil fuel based QFs will continue to be eligible for avoided cost based rates. However, since avoided cost is a rate based not on "cost" per se, but rather on the "value" of the QF electricity to the purchasing electric utility and to society, it is consistent with the statutes to reflect the lower value accorded to fossil fuel based electricity by assigning it to the block that allows the utility to avoid a lower level of costs. Accordingly, we conclude that our decision to assign priorities based on fuel type is consistent with both PURPA and LEEPA. The Motions for Rehearing will be denied on this ground.

Effect on DE 83-62 and DR 85-215 Methodology

[2] The Movants claim that Order 18,530 (72 NH PUC 8) improperly amends the DE 83-62 and DR 85-215 methodology. This claim is based on the argument that DE 83-62 and DR 85-215 are "rules" as defined by the New Hampshire Administrative Procedure Act, RSA 541-A:1, XIII (Supp. 1986). The claim is also based on the argument that the two alleged changes in methodology — the UNITIL load assumption and the level of QF capacity — represent a retroactive alteration by the Commission of the interests balanced in DE 83-62 and DR 85-215. The Movants' arguments in this area must be rejected and, accordingly, the Motions for Rehearing will be denied on this ground.

Page 80

The initial defect in the Movants' argument is the assumption that DE 83-62 and DR 85-215 are rules. This assumption is incorrect. Both orders were the outcome of adjudicative

proceedings. RSA 541-A:1, I (Supp. 1986). Such adjudicative proceedings are very different than the process required for the adoption of rules. See RSA 541-A:2 — 13 (Supp. 1986). The law is clear — a rule cannot be effective and cannot be enforced unless the agency follows the procedural requirements for promulgation. RSA 541-A:13 (Supp. 1986); Re Pelletier, 125 N.H. 565, 570-71 (1984); Great Lakes Container Corp. v. National Union Fire Insurance Co., 727 F.2d 30, 32 (1st Cir.1984). It must also be noted that the utilization of the rulemaking process was not appropriate in the DE 83-62 and DR 85-215 context. The definition of "rule" states inter alia that it is a "... regulation, standard or other statement of general applicability ..." RSA 541-A:1, XIII (Supp. 1986) (Emphasis supplied). DE 83-62 and DR 85-215 pertained to PSNH only; they did not purport to govern the practices of the other regulated electric utilities within the state. Thus, those orders cannot be construed to be "of general applicability".

The remaining arguments pertain to the Commission recognition of changes in the PSNH load forecast and in projected QF capacity. Each argument presents different issues and we will address them separately.

With respect to the reflection of the assumption of the loss of the UNITIL load, the Movants' have argued in effect that the Commission has disturbed the balance struck by the methodology by varying one factor without varying others. The Movants are correct that the DE 83-62 methodology struck a balance by assigning weights to certain anticipated uncertainties. See e.g., DE 83-62, 69 NH PUC 352, 363, 364. However, the methodology also involved taking various inputs (e.g., PSNH's PROSIM runs) as a "given". To the extent that those given inputs change, the output (i.e., PSNH's avoided cost rates) will also change. One of the inputs which the methodology takes as a "given" is PSNH's load forecast. In both DE 83 62 and DR 85-215 PSNH's load forecast included the UNITIL load. The most recent PSNH load forecast does not include that load. Since the latest PSNH load forecast is one of the inputs in the DE 83-62 methodology, it is not improper to note that one of the causes for the change in the forecast is PSNH's assumption that it will no longer serve the UNITIL load. It is also not inappropriate to include this new PSNH load forecast input into our definition of how much QF capacity can be purchased before PSNH's avoided costs decrease. In fact, such inclusion of this input is entirely consistent with the DE 83-62 methodology.

The other factor cited in Order 18,530 is the amount of QF capacity being developed and proposed. As noted above, the balance struck in DE 83-62 involved the assignment of weights to anticipated uncertainties. The development of the QF resource well beyond the 200 MW avoided cost threshold was simply not anticipated. This Commission has the responsibility to take action to ensure that ratepayers are not asked to shoulder a disproportionate burden. To the extent that rates for proposed projects are known at the time of application to be above avoided cost, they are inconsistent with the statute, unjust and unreasonable, and require ratepayers to shoulder a disproportionate burden by subsidizing QFs. See e.g., 18 C.F.R. §292.304(a). Appropriate action by the Commission to ensure that rates are no higher than avoided cost is required by law.

Due Process

[3] The Movants claim that the Commission's action deprived them of their due process rights in that they were denied appropriate notice and an opportunity to be heard. Additionally, the Movants claim that the Commission made findings of fact, some of which were articulated above, without the benefit of a record.

In making the determinations set forth in Order 18,530, as amended, the Commission was not operating in a vacuum. We

have been receiving information pertinent to the instant claims since PURPA and LEEPA were enacted and, more recently, in the high number of related ongoing dockets that are currently before the Commission. The Commission is entitled to take official notice of this information. RSA 541-A:18, V(a) (Supp. 1986). We are also entitled to rely upon our own expertise in this area. RSA 541-A:18, V (b) (Supp. 1986).

We recognize however that we must notify the parties when we take official notice of information as permitted by statute. RSA 541-A:18, V (Supp. 1986); see also Re Granite State Electric Co., 121 N.H. 787, 792 (1981). Parties should be given an opportunity to address the information before the Commission and identify deficiencies in the Commission's analysis. This step, which is critical to the quality of Commission decision making, was omitted in the procedure that lead to Order 18,530. Accordingly, we will grant the Motions for Rehearing on this ground. To the extent that the record developed at rehearing supports findings different from those of Order No. 18,530 and articulated in this order, the Commission's analysis may also change in an appropriate corresponding manner.

In order to ensure an orderly process that will allow all parties an opportunity to address the issues, we will in this order establish the procedural schedule for rehearing. That schedule will provide for the filing of a technical paper by the Commission Staff which will identify and analyze the factual information officially noticed. At the rehearing, the Staff will present this technical paper and the parties will be permitted the opportunity to cross examine the Staff member(s) responsible for the technical paper. The parties will also be permitted the opportunity to present their own testimony relevant to the factual issues before the Commission. In order to ensure an orderly procedure, we will direct the parties to pre-file all testimony. The parties should be on notice that testimony and exhibits which are not pre-filed may not be admitted into the record.

Based upon the foregoing, the rehearing schedule will be as follows:

March 20, 1987 Filing date for Staff Technical Paper.

April 17, 1987 Due date for Pre-filed Testimony and Exhibits of all parties.

May 12, 1987 Evidentiary hearings.

Parties may file data requests following receipt of Staff technical paper and intervenor testimony. Responses should be provided within ten (10) days of the issuance of such data requests.

Our Order will issue accordingly.

SUPPLEMENTAL ORDER

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

ORDERED, that Report and Order No. 18,530 (72 NH PUC 8) (January 7, 1987) be, and

hereby is, amended to delete all references to the Commission's analysis and orders in Re Public Service Co. of New Hampshire, Docket No. DF 84-200; and it is

FURTHER ORDERED, that the Motions for Rehearing be, and hereby are, granted to the extent provided in the foregoing Report; and it is

FURTHER ORDERED, that the procedure on rehearing shall be as set forth in the foregoing Report; and it is

FURTHER ORDERED, that in all other respects the Motions for Rehearing be, and hereby are, denied.

By order of the Public Utilities Commission of New Hampshire this sixth day of March, 1987.

FOOTNOTES

[1]The CRR was not a party to the proceeding which lead to Order No. 18,530 (72 NH PUC 8). See e.g., CRR Motion for Rehearing at §2. This does not bar CRR from filing a Motion for Rehearing because the statute provides that such motions may be filed by "... any party to the action or proceeding before the commission or any person directly affected thereby ..." RSA 541:3. For the purposes of the instant order, we have considered and ruled on the claims of the CRR.

Given the nature of those claims, we do not believe that our decision to address the CRR Motion can be construed as a finding that CRR's substantial interests will be affected to an extent that warrants intervention in the proceedings on rehearing. See e.g., RSA 541-A:17 (Supp. 1986). If CRR wishes to participate in the proceedings on rehearing, it must file a Motion to Intervene pursuant to RSA 541-A:17 (Supp. 1986) and N.H. Admin. Rules, Puc 203.02 (or Puc 203.03).

[2]The record support for these findings will be discussed infra.

==========

NH.PUC*03/06/87*[60443]*72 NH PUC 83*Wilton Telephone Company, Inc.

[Go to End of 60443]

72 NH PUC 83

Re Wilton Telephone Company, Inc.

DF 86-284
Order No. 18,587

New Hampshire Public Utilities Commission

March 6, 1987

ORDER granting request for authority to pay a stock dividend.

DIVIDENDS, § 10 — Stock dividends — Fractional shareholders.

[N.H.] A utility may issue a stock dividend of three shares for each share presently held where even fractional shareholders would be allowed to hold shares in the same proportionate amount to the total shares outstanding as they held prior to the stock dividend.

By the COMMISSION:

ORDER

WHEREAS, Wilton Telephone Company, Inc., a corporation organized under the laws of the State of New Hampshire, and having its principal place of business in Wilton, County of Cheshire, State of New Hampshire having filed, on October 24, 1986, a petition for authority to pay a stock dividend of three shares for each of the 1,225 shares presently outstanding; and

WHEREAS, Wilton Telephone Company, Inc. shareholders voted on February 24, 1986 to amend the Articles of Incorporation to authorize an additional 3,675 shares at $100 par value for a total authorized 4,900 common shares; and

WHEREAS, Wilton Telephone Company, Inc. proposes to issue 3,675 shares, which are identical to the present common shares issued and outstanding, to present shareholders at a rate of three additional shares for each share presently held; and

WHEREAS, Wilton Telephone Company, Inc. states that all shareholders, including holders of fractional shares, will hold shares in the same proportionate amount to the total shares outstanding as they held prior to the stock dividend; and

WHEREAS, Wilton Telephone Company, Inc. states that the record and payment date for the stock dividend will be ten days after receipt of approval from the Public Utilities Commission; and

WHEREAS, the New Hampshire Public Utilities Commission finds that pursuant to RSA 369:1 is consistent with the public good to grant said request; it is

ORDERED, that Wilton Telephone Company, Inc. is hereby authorized to issue stock dividends to its present shareholders at a rate of three shares for each one share held, with fractional shares to be considered on the same basis, for a total authorized 4,900 common shares with a $100 par value.

By order of the Public Utilities Commission of New Hampshire this sixth day of March, 1987.

==========

72 NH PUC 84

Re Concord Steam Corporation

DR 85-304
Fifth Supplemental Order No. 18,589
New Hampshire Public Utilities Commission
March 10, 1987

ORDER granting a request for a clarification of the reasons underlying a denial of a request for a rehearing.

PROCEDURE, § 33 — Rehearings and reopenings — Grounds for granting or denying.

[N.H.] A motion for rehearing was denied where the utility's offer of proof, while accepted, did not alter the basic findings of the commission and was irrelevant to those findings.

By the COMMISSION:

In response to Report and Fourth Supplemental Order No. 18,555 denying Concord Steam Corporation's (Concord Steam or the Company) Motion for Rehearing, Concord Steam wrote to the Commission on February 4, 1987 requesting clarification of the Commission's Order. Concord Steam specifically requested clarification relative to the opportunity to present additional evidence in the separate refund proceeding relative to the prudency of the Company's arrangements with Wood Fuel Products (WFP) and whether the royalty payments were proper ratepayer expenses. In further support, the Company submitted an Offer of Proof on February 4, 1987.

The Commission has reviewed the Company's request and its Offer of Proof. The Commission accepts the Company's Offer of Proof, but concludes that the facts the Company purports to prove would not alter the basic findings of the Commission relative to the prudency of the WFP contracts and arrangements. These findings were that Roger Bloomfield entered into a purchase agreement with WFP which did not protect Concord Steam in the event that the wood processing plant venture failed. Because the contract provided no protection to Concord Steam, WFP was able to use the contract as a lever to force Concord Steam to assume WFP's losses.

The Offer of Proof does not change these findings. Even if the Company can demonstrate that the purchase contract provided proper specifications for the fuel, the Company nevertheless could not terminate its arrangement with WFP because of the interrelationships of its dealings with Lazard Freres & Co. (Offer of Proof at 7.)

The Company also proposes to demonstrate that ratepayers have benefitted from the Company's conversion from oil to wood as a fuel source. Even if the Company demonstrates that fact, it does not follow that Concord Steam required its own wood processing facility to make the

conversion.

The Commission concludes that the Offer of Proof does not provide a basis to reopen the record and change its findings on this issue.

Furthermore, the Commission does not believe the Company has any justifiable due process complaint. The Company recognizes that the Staff put at issue the question of whether certain royalty payments made by the Company were an appropriate charge to ratepayers. The Company did not argue that this question was an inappropriate issue to be considered in this proceeding. Furthermore, the questioning by the Commission clearly notified the Company of its concerns with this issue. It is clear that the Company recognized this fact because of the extensive attention and documentation devoted to this issue in its brief.

Finally, the Company's due process complaint is somewhat extraordinary given the circumstances surrounding the royalty fee issue. The Company failed to disclose the Qualified Wood Fuel Sales Purchase Agreement and the WFP partnership agreement to the Commission. Consequently, the Commission did not discover the true purpose of the royalty payments until this

proceeding. Now the Company complains that the Commission once it had made this discovery did not give the Company adequate notice of the findings it could make in this docket. Due process does not require that the Company be notified in advance of every potential finding that the Commission may make, so long as the Commission findings are supported by the evidence in the proceeding.

The Commission has ordered no refunds for royalty charges in this docket. While we do not intend to reconsider the propriety of the Company's arrangements with WFP or the Commission's finding that royalty payments should not have been charged to ratepayers, the Commission will hear in the new docket evidence concerning the amount of refunds, the method for refunding and any legal issues relative to these questions that the Company wishes to raise.

SUPPLEMENTAL ORDER

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

ORDERED, that the letter request for clarification dated February 4, 1987 is denied for the reasons set forth in the foregoing Report.

By order of the Public Utilities Commission of New Hampshire this tenth day of March, 1987.

==========

NH.PUC*03/12/87*[60445]*72 NH PUC 85*TDEnergy, Inc.

[Go to End of 60445]

Re TDEnergy, Inc.

DR 84-139
Order No. 18,593

Re TDEnergy — Bristol/Bridgewater

DR 85-41

New Hampshire Public Utilities Commission

March 12, 1987

ORDER rescinding special rates and interconnection approved for a small power producer.

COGENERATION, § 24 — Rates — In general — Special rates — Conditions therefor.

[N.H.] The special rates and interconnection agreements approved for a small energy producer were rescinded where the producer allowed the commercial operation dates specified by the commission to pass without having completed its financing arrangements or having started construction of the approved generating facilities.

APPEARANCES: Dr. Sarah P. Voll, for the Staff of the Public Utilities Commission.

By the COMMISSION:

REPORT

TDEnergy, Inc. (TDE) originally proposed to develop a wind project sized up to 16 MW in the Canaan, Dorchester and Bristol/ Bridgewater areas. The project was expected to be developed in a series of phases, and, accordingly, TDE petitioned for three long term rates to apply to the separate phases: DR 84-283 for 650 KW in Canaan, DR 84-139 for 3.75 MW near Dorchester and DR 85-41 for 6.0 MW in Bristol/Bridgewater.

DR 84-283 and DR 85-41 were filed pursuant to Re Small Energy Producers and Cogenerators, Docket No. DE 83-62 Report and Eighth Supplemental Order No. 17,104 (July 5, 1984) (69 NH PUC 352, 61 PUR4th 132), while DR 84-139 was filed pursuant

to the Interim orders in DE 83-62, Report and Fourth Supplemental Order No. 16,619 (September 2, 1983) (68 NH PUC 531) and Report and Fifth Supplemental Order No. 16,664 (October 4, 1983) (68 NH PUC 575).

Phase 1 has been completed as ten 65 KW wind machines, and is currently receiving payment under the rates approved in DR 84-283. Investigation in August, 1986 by the Commission Engineering Department revealed that the financing package had not been completed and no construction was contemplated in the near future for either the Dorchester or Bristol/Bridgewater sites.

On February 9, 1987 by Order No. 18,567 the Commission ordered that TDE appear before the Commission on February 19, 1987 to show cause why approval of the long term rate filings granted in DR 84-139 and DR 85-41 should not be rescinded and that testimony and exhibits be pre-filed with the Commission on February 17, 1987. TDE did not pre-file testimony and did not appear before the Commission; nor did TDE contact the Commission with a request for a continuance.

Based on the evidence presented by Staff the Commission finds that the commercial operation dates specified in the TDE orders and the latest commercial operation date pursuant to DE 83-62 have passed without TDE having completed its financing or started construction of its projects. Additionally, TDE has presented no evidence to demonstrate its intention to develop these projects or to support its continuing eligibility for the Commission approved rates.

Therefore, the Commission finds that TDE is no longer eligible for its long term rates approved in DR 84-139 and DR 85-41 and will rescind approval of the filings, including the interconnection agreements and the rates set forth on the long term worksheets.

Our Order will issue accordingly.

ORDER

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

ORDERED, that approval of the long term rate filings of TDEnergy for the Dorchester and Bristol/Bridgewater phases of its project, including the interconnection agreements and the rates set forth on the long term worksheets, be, and hereby are, rescinded.

By order of the New Hampshire Public Utilities Commission this twelfth day of March, 1987.

==========

NH.PUC*03/13/87*[60446]*72 NH PUC 86*Salmon Falls Hydro Company, Inc.

[Go to End of 60446]

72 NH PUC 86

Re Salmon Falls Hydro Company, Inc.

DR 86-247
Second Supplemental Order No. 18,597

New Hampshire Public Utilities Commission

March 13, 1987

ORDER approving rates and an interconnection agreement for a small power production project.

COGENERATION, § 25 — Rates — Long-term unlevelized rates — Small power production.

[N.H.] In response to a petition by a small power producer for a thirty year non-levelized rate, the commission granted a rate order and approved long-term rates for the first twenty years of the project's operation, however, approval of long-term non-levelized rates for the last ten years of the rate period was denied based on a finding that approval of a thirty-year rate with the last ten years unlevelized would expose future ratepayers to the risk of paying an undiscounted rate based on a projection made more than twenty years earlier.

By the COMMISSION:

SUPPLEMENTAL ORDER

Page 86

WHEREAS, on December 11, 1986 by Order No. 18,502 (71 NH PUC 784) the Commission granted Salmon Falls Hydro Co., Inc. (Salmon Falls) an opportunity to petition the Commission pursuant to Re Small Energy Producers and Cogenerators, Docket No. DR 86-134 Report and Order No. 18,334 (July 10, 1986) (71 NH PUC 408) (DR 86-134) 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 by the present owner exceed the non-levelized rates and that without some degree of front-end loading the project will of necessity cease operations; and

WHEREAS, on February 20, 1987 Salmon Falls petitioned the Commission for a thirty year non-levelized rate; and

WHEREAS, pursuant to Re Small Energy Producers and Cogenerators, Docket No. DE 83-62, Report and Eighth Supplemental Order No. 17,104, (July 5, 1984) (69 NH PUC 352, 61 PUR4th 132) 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, Salmon 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, it is therefore

ORDERED, that Salmon 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 Salmon Falls project for the years 1987-2006 is approved; and it is

FURTHER ORDERED, that Salmon 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 thirteenth day of March, 1987.

==========

NH.PUC*03/13/87*[60447]*72 NH PUC 87*Kent Farm Water Company

[Go to End of 60447]

72 NH PUC 87

Re Kent Farm Water Company

DR 86-198
Supplemental Order No. 18,598

New Hampshire Public Utilities Commission

March 13, 1987

ORDER correcting calculation of total annual depreciation expense of a water utility. For prior order see 72 NH PUC 43.

RATES, § 640 — Procedure and practice — Correction of errors.

[N.H.] Order correcting an error made in the calculation of total annual depreciation expense in a prior order that had authorized a water company to operate as a public utility and to collect annual revenues.

By the COMMISSION:

Page 87

SUPPLEMENTAL ORDER

WHEREAS, a Report and Order No. 18,560 were issued on February 4, 1987, (72 NH PUC 43) authorizing the Kent Farm Water Company to operate as a public utility and further authorized the collection of gross annual revenues of $21,304; and

WHEREAS, an error was made in the calculation of total annual depreciation expense (Report at Page 8, 72 NH PUC at p. 46), which should be in the amount of $3245.68; it is hereby

ORDERED, that the metered water rate shall be as follows:

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

Base Minimum Charge

```
Depreciation $3,246
$3246 ° 96 customers = $33.81 annual
$ 8.45 quarterly

Consumption Charge

Revenue Requirement $21,304
Less Base/Minimum 3,246
$18,058

$ 18,058
 768,000 = $2.35/100 cubic feet
```

By order of the Public Utilities Commission of New Hampshire this thirteenth day of March, 1987.

==========

NH.PUC*03/18/87*[60448]*72 NH PUC 88*City of Concord Water Department

[Go to End of 60448]

72 NH PUC 88

Re City of Concord Water Department

DE 86-223
Order No. 18,600

New Hampshire Public Utilities Commission

March 18, 1987

ORDER granting a municipal water department authority to provide service to an area outside its municipal boundaries.

SERVICE, § 359.1 — Municipal plant — Extra territorial service — Grant of authority to provide utility service.

[N.H.] A municipal water department was authorized to commence business as a water public utility for the purpose of serving a limited area of a town located outside its municipal boundaries where (1) the area to be served had previously relied on private wells that had become contaminated, (2) the area would be served under the same rate schedules as customers located within the municipal boundaries, and (3) the selectmen of the town supported the extension of service; the commission noted that the grant of authority was for a very limited service area that had not been previously granted to any utility and should not be viewed as setting precedent.

APPEARANCES: John Forrestall, General Director, on behalf of the City of Concord Water Department; Martin C. Rothfelder, Esquire, General Counsel, on behalf of the Commission Staff.

By the COMMISSION:

REPORT

I. PROCEDURAL HISTORY

On July 30, 1986, the City of Concord Water Department (Concord) filed a petition for authority pursuant to RSA 374:22 to provide water service to a limited area in the Town of Bow, New Hampshire.[1(24)] An Order of Notice was issued on July 31, 1986 setting a hearing for August 27, 1986. In response to a request by Concord and the United States Environmental Protection Agency (EPA), the Commission issued Order No. 18,378 on August 21, 1986, (71 NH PUC 500) granting Concord temporary authority to provide water service to the subject area during the pendency of the proceedings. John Forrestall, Concord's General Director, offered testimony and exhibits at the August 27, 1986 hearings in support of the petition.

Page 88

II. COMMISSION FINDINGS AND ANALYSIS

In the spring of 1986, the New Hampshire Water Supply and Pollution Control Commission (WSPCC) became aware of a groundwater contamination problem in a section of Hall Street in Bow, New Hampshire near the Concord line. With the assistance of the EPA, the WSPCC, the DPHS, and the Town of Bow determined that the most viable alternative water supply for the affected area was an extension of the City of Concord's water main into Bow.

Thereafter, a formal request for the extension was made by the Bow Board of Selectmen to the Concord City Council. At its June 9, 1986 meeting, the Concord City Council voted to extend its water main on Hall Street into Bow but only to serve the area's residential customers and one industrial customer whose situation is discussed below.

Concord City Council's intent, as stated in a letter of July 30, 1986 from the director of the water department to this Commission, is to provide service only to existing residential homes in a designated area of Hall Street. It was also stated that water service would not be available for any commercial or industrial development in this area which is further enforced by the requirement that each property owner execute an agreement recognizing Concord's intent to discontinue service if the property should become other than residential.

A franchise granted in this docket would also recognize the water service Concord has supplied to Universal Packaging Corporation since 1979. Water supplied to Universal is for general service, not fire protection.

The proposed franchise area is shown on an Assessors Map of the Town of Bow filed with the petition and bearing the designation Figure II. The area is further described as follows:

Beginning at a point along the center line of Hall Street, said point being at the northerly boundary of the Town of Bow and the southerly boundary of the City of Concord, thence southwesterly following the path and contour of the center line of Hall Street, 1290 feet plus or minus to the residential dwelling at Number 523 Hall Street (Block 1, lot 80). Such area meaning and intending to include Lots 61 through 65 and 67 through 80 of Block 1 of the Assessors Maps of the Town of Bow.

The Town of Bow, through its selectmen, has indicated by letter of May 23, 1986, that it supports the authority here sought. We note also that the customers in Bow will be served under the same rate schedule as customers in Concord.

We find that granting Concord a franchise to serve in Bow is in the public good, and we so rule. We would also encourage Concord to extend its service in other areas outside of the city if an opportunity or need should present itself, as we believe that large water systems should provide this vital service wherever possible, on a regional basis. Of note here is that we are granting a franchise for a very limited service which we have not before granted to any water utility. The record will note that no precedent is being set by our decision in this docket.

In developing the availability charge to customer's in Bow, Concord shall use equalized assessed valuation.

Our order will issue accordingly.

ORDER

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

ORDERED, that the City of Concord Water Department be, and hereby is, authorized to commence business as a water public utility, pursuant to the provisions of RSA 374 and 378, in a limited area in the Town of Bow as described in the foregoing report; and it is

FURTHER ORDERED, that such authority shall be effective as of the temporary

authority granted by Order No. 18,378 on August 21, 1986.

By order of the Public Utilities Commission of New Hampshire this eighteenth day of March, 1987.

FOOTNOTES

[1]RSA 374:22 provides as follows:

No person or business entity shall commence business as a public utility with 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 without first having obtained the permission and approval of the commission.

==========

Re Laconia Investment Properties, Inc.

DE 86-289
Order No. 18,602

New Hampshire Public Utilities Commission

March 18, 1987

PETITION for license to cross state-owned land with pipe; granted subject to conditions.

CERTIFICATES, § 88 — Factors affecting grant — Public convenience and necessity — License to cross state-owned property — Sewer pipes.

[N.H.] A property development corporation was granted a license to cross state-owned land with storm drain pipe and sanitary sewer pipe where installation of the pipe was deemed necessary to meet the reasonable requirements of service to the public.

APPEARANCES: For the petitioner, Tom Byer and Walter Pierce of Laconia Investment Property. For DOT Bureau of Railroads, Center Sanders and for the Commission staff, Mary Hain, Esquire and Robert B. Lessels.

By the COMMISSION:

REPORT

I. PROCEDURAL HISTORY

On November 10, 1986 Rist Frost Associates filed with this Commission a petition on behalf of their client, Laconia Investment Properties, Inc. pursuant to RSA 371:17 for license to cross State-owned land with 30" and 24" diameter storm drain pipes. On December 22, 1986 a supplemental petition was filed for a license to cross State-owned land with an 8" sanitary sewer pipe at two separate locations. These petitions have been consolidated under this single docket which considers a total of four crossings.

On January 6, 1987 an Order of Notice was issued setting a hearing for February 26, 1987 at 10:00 a.m. before this Commission at its office in Concord. Notices were sent to Rist Frost Associates as representatives of the applicant and the following state departments and divisions: Division of Motor Vehicles; Department of Transportation, Supervisor of Public Records; Director, Industrial Development, DRED; Railroad Administrator, Department of Transportation; Commissioner, Department of Transportation; Director, Department of Safety Services; Chief of Land Management DRED and the Office of Attorney General.

On February 26, 1987 the petitioner filed an affidavit that publication had been made in the Evening Citizen, Laconia, New Hampshire on January 27, 1987.

A hearing was held on February 26, 1987. At the hearing, testimony for the applicant was provided by Tom Byer and Walter Pierce. Testimony regarding licenses for crossings to be issued by the Department of Transportation, Bureau of Railroads was

provided by Center Sanders. No one appeared in opposition to the petition.

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 water 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. Byer presented three exhibits which describe two sewer taps and two storm drains which would cross railroad property in Laconia. These facilities are being developed as part of the Long Bay Development. The two storm drains would conduct rain water from the Long Bay Development through a system of open channels and pipes under the railroad tracks and then into Paugus Bay of Lake Winnepesaukee. The two sanitary sewer crossings would enter the railroad right-of-way and then tap into the existing 48" diameter interceptor sewer line. These lines would not cross the railroad track.

The petitioner testified that the proposed facilities are being designed in accordance with the specifications of the City of Laconia and it is the petitioner's expectation that they will be taken over by the city upon completion of all work. Prior to that time, ownership and responsibility for operation and maintenance of these facilities will remain with the developer, Laconia Investment Properties, Inc. It was further testified that charges for use of the sewerage facilities would be made by the Water Department of the City of Laconia. These charges would be initiated at the time water service is provided to the properties. The city would therefore initiate sewer billing before their formal acceptance of the sewer system.

Mr. Center Sanders of the Bureau of Railroads provided four exhibits identified as Exhibits 4, 5, 6, and 7 which are copies of licenses for the storm drain crossings and sewer connectors which are the subject of this petition. These licenses have been executed by the New Hampshire Department of Transportation and the petitioner. However, they are also subject to approval by the Governor and Executive Council which has not yet been obtained pending receipt of the license for crossing to be issued by this Commission.

The petitioner further testified that the only other license required for the construction of the proposed facilities is approval from the Water Supply and Pollution Control Commission. The petitioner has had discussions with that agency and received tentative agreement on the plans proposed; however, he is required to notify the Water Supply and Pollution Control Commission 2 weeks prior to connection to the interceptor sewer line.

No one appeared at the hearing in opposition to the petition. After a complete review we find that installation of the abovedescribed storm drains and sewer connections are necessary to meet the reasonable requirements of service to the public and are in the public interest. Accordingly, we will grant the petition of Laconia Investment Properties subject to the condition that notification requirements of the Water Supply and Pollution Control Commission are observed.

Our order will issue accordingly.

Page 91

ORDER

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

ORDERED, that the petition of Laconia Investment Properties, Inc. for a license to cross State-owned land with 30" and 24" diameter storm drain pipes and with 8" diameter sanitary sewer pipe at two locations, all in the city of Laconia, New Hampshire be and hereby is granted subject to the condition that the petitioner observe all notification requirements of the New Hampshire Water Supply and Pollution Control Commission; and it is

FURTHER ORDERED, that this order shall be considered a license for the purpose of RSA 371:17.

By Order of the Public Utilities Commission of New Hampshire this eighteenth day of March, 1987.

==========

NH.PUC*03/18/87*[60450]*72 NH PUC 92*Mountain High Water Company

[Go to End of 60450]

72 NH PUC 92

Re Mountain High Water Company

DR 87-9
Supplemental Order No. 18,603

New Hampshire Public Utilities Commission

March 18, 1987

ORDER requiring a hearing on proposed water rates.

RATES, § 649 — Procedure — Requests for hearing — Impact on previously set effective date.

[N.H.] Where the commission received requests for hearing on a water utility's proposed rate structure, the commission vacated an earlier order setting an effective date for the rates and established a hearing date.

By the COMMISSION:

SUPPLEMENTAL ORDER

WHEREAS, Order No. 18,577 issued on February 20, 1987 (72 NH PUC 68), or- dered NISI that temporary rates sought by Mountain High Water Company would become effective on March 19, 1987 unless a request for hearing is filed or the Commission orders otherwise; and

WHEREAS, the Commission has received statements from two customers of Mountain High questioning the validity of the charges proposed; and

WHEREAS, from a review of the material presented the Commission finds a hearing on the matter would be in the public interest; it is hereby

ORDERED, that the effective date of March 19, 1987 as allowed by Order No. 18,577 is vacated; and it is

FURTHER ORDERED, that a public hearing shall be held on May 21, 1987 at 10:00 a.m. at the offices of the Commission to hear evidence in support of or in opposition to the temporary rates proposed.

By order of the Public Utilities Commission of New Hampshire this eighteenth day of March, 1987.

==========

NH.PUC*03/19/87*[60452]*72 NH PUC 93*Concord Natural Gas Corporation

[Go to End of 60452]

72 NH PUC 93

Re Concord Natural Gas Corporation

DR 86-292
Supplemental Order No. 18,607

New Hampshire Public Utilities Commission

March 19, 1987

ORDER allowing temporary gas rates to become effective at the level of current, permanent rates.

RATES, § 634 — Emergency rates — Generally — Deficiency — Need to establish.

[N.H.] A gas utility whose current rates were not conclusively shown to be deficient may be authorized to file tariffs that allow for temporary rates at the current, permanent rate level where: (1) a full, more complete investigation in the subsequent permanent rate case may result in a rate

reduction or increase and a recoupment of any overrecovery or underrecovery; (2) an increase in temporary rates would protect ratepayers as well as the gas utility pending the permanent rate case; and (3) the duty of the commission to investigate temporary rates is lower than as to permanent rates.

APPEARANCES: Charles H. Toll, Jr., Esquire of Orr and Reno for Concord Natural Gas Corporation; Martin C. Rothfelder, Esquire on behalf of the Commission Staff.

By the COMMISSION:

REPORT REGARDING TEMPORARY RATES

This report addresses a petition by Concord Natural Gas Corporation for temporary rates. The report discusses the procedural history, and the Commission's authority to implement temporary rates. It also provides findings of facts and analysis. The report and the order attached hereto then authorizes temporary rates at the current permanent rate level.

I. Procedural History

On January 13, 1987 Concord Natural Gas Corporation (Company) filed revised tariff pages designed to increase gross annual revenues by $524,624 net of the cost of gas. The proposed tariffs would apply to bills rendered on and after February 13, 1987. On January 16, 1987 the Company filed a petition for temporary rates pursuant to Section 378:27 N.H. Rev. Stat. Ann.[1(25)] The petition for temporary rates requested that the Company be allowed to implement rates designed to collect an additional amount of $465,605 effective with bills rendered on and after February 13, 1987.

On February 11, 1987, by Order No. 18,570, the Commission suspended the effective date of the tariffs requesting permanent rate relief and scheduled a hearing on temporary rates on March 17, 1987. On March 7, 1987 the Staff filed a document entitled Temporary Rate Stipulation Agreement which consisted of an agreement between the Company and the Staff recommending that the Commission authorize temporary rates for the Company at current permanent rate levels as a disposition of the petition for temporary rates. On March 17, 1987, a hearing was held in the Commission's hearing rooms in Concord, New Hampshire regarding the petition for temporary rates. The only parties present were Concord Natural Gas Corporation and the Commission Staff. At that time, the Staff and Company presented the Stipulation. In addition, Mr. Kenneth Traum of the Company presented testimony in support of the Stipulation.

II. The Commission's Authority

The Commission's power to set temporary rates is explicitly authorized by statute. N.H. Rev. Stat. Ann. § 328:28. 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. of New Hampshire v. New Hampshire, 102 N.H. 66, 70, 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).

III. Findings and Analysis

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.

Based upon the record before the Commission, 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, based on the relevant law discussed above,

implementation of temporary rates at this time clearly protects both the ratepayers and the Company. In addition, the record reflects that the Company has not received rate relief since 1985 and that there is significant growth in their service territory. Based on these overall facts, the Commission finds it in the public interest to authorize the Company to file tariffs which allow for temporary rates at the current permanent rate level effective March 19, 1987.

SUPPLEMENTAL ORDER

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

ORDERED, that Concord Natural Gas Corporation shall be authorized to file and implement temporary rates for bills rendered on and after March 19, 1987 which set such temporary rates at current permanent rate levels; and it is

FURTHER ORDERED, that Concord Natural Gas Corporation shall on or before March 19, 1987 file tariffs appropriate to implement temporary rates.

By order of the Public Utilities Commission of New Hampshire this nineteenth day of March, 1987.

FOOTNOTES

[1]All citations herein are to the New Hampshire Revised Statutes Annotated unless otherwise indicated.

==========

NH.PUC*03/20/87*[60451]*72 NH PUC 92*Professional Construction Management, Inc.

[Go to End of 60451]

Re Professional Construction Management, Inc.

DE 87-40
Order No. 18,606

New Hampshire Public Utilities Commission

March 20, 1987

ORDER nisi authorizing a construction company to place and maintain a sanitary sewer line beneath state-owned land.

Page 92

CERTIFICATES, § 88 — Factors affecting grant — Public convenience and necessity — License to cross state-owned land — Sanitary sewer line.

[N.H.] A construction company was conditionally authorized to place and maintain a sanitary sewer line beneath state-owned land where said sewer line was deemed necessary to serve the needs of the Northfield Sewer Commission.

By the COMMISSION:

ORDER

WHEREAS, on March 9, 1987, Professional Construction Management, Inc. (PCM) filed with this Commission a petition seeking license to place and maintain a sanitary sewer line beneath State-owned railroad property in the Town of Northfield, New Hampshire; and

WHEREAS, said sewer line is necessary to serve the needs of the Northfield Sewer Commission; and

WHEREAS, this Commission finds such construction in the public good; and

WHEREAS, the public should be offered the 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 April 6, 1987; and it is

FURTHER ORDERED, that PCM effect said notification by publication of this order once in the Evening Citizen, such publication to be no later than March 27, 1987 and designated in affidavits to be made on a copy of this order and filed with this office; and it is

FURTHER ORDERED, NISI that PCM be authorized pursuant to RSA 371:17 et seq to place and maintain a sanitary sewer line beneath the State-owned railroad property in Northfield, New Hampshire; as depicted in PCM Drawings for project No. 67-86-01 on file with this Commission; and it is

FURTHER ORDERED, that all construction meet requirements of the Railroad Division, Department of Transportation, and the Water Supply and Pollution Control Division, Department of Environmental Services; and it is

FURTHER ORDERED, that such authority shall be effective 20 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 twentieth day of March, 1987.

==========

NH.PUC*03/20/87*[60453]*72 NH PUC 95*Manchester Gas Company

[Go to End of 60453]

72 NH PUC 95

Re Manchester Gas Company

DR 86-293
Supplemental Order No. 18,608

New Hampshire Public Utilities Commission

March 20, 1987

ORDER authorizing a gas company to implement temporary rates at current permanent rate levels.

RATES, § 630 — Temporary rates — Natural gas distribution utility — Effect of pending permanent rate case.

[N.H.] A gas distribution utility was authorized to file and implement temporary rates at current permanent levels even though the utility had a permanent rate case pending before the commission; although it was hesitant to authorize temporary rates so close to the implementation of new permanent rates, the commission granted the request for temporary rates based on a finding that the temporary rates may have the effect of benefitting utility customers.

APPEARANCES: Charles H. Toll, Jr., Esquire of Orr and Reno for Manchester Gas Company; Martin C. Rothfelder, Esquire on behalf of the Commission Staff and the Commission.

By the COMMISSION:

REPORT REGARDING REQUEST FOR TEMPORARY RATES

This report addresses a petition by Manchester Gas Company for temporary rates. The report discusses the procedural history, and the Commission's authority to implement temporary rates.

It also provides findings of facts and analysis. The report and the order attached hereto then authorizes temporary rates at the current permanent rate level.

Page 95

I. Procedural History

On January 9, 1987 Manchester Gas Company (Company) filed proposed tariff pages reflecting rates designed to increase gross annual revenues by an amount of $795,201, net of cost of gas. As filed the proposed permanent tariffs would become effective for bills rendered on and after February 13, 1987. On January 9, 1987 the Company filed a petition for temporary rates pursuant to Section 378:27 N.H. Rev. Stat. Ann.[1(26)] The petition requested a temporary increase in rates in an amount designed to recover additional revenues in the amount of $696,377 annually.

On February 11, 1987 the Commission suspended the effective date of the proposed permanent tariffs pursuant to Section 378:6 and scheduled a hearing on the temporary rates. In a revised order issued on February 18, 1987, the Commission scheduled a hearing on the temporary rates on March 17, 1987.

On March 12, 1987, the Staff of the Commission filed a document entitled Temporary Rate Stipulation Agreement. That document reflected an agreement of the Staff and the Company for disposition of the temporary rate application via authorizing Manchester Gas Company to implement temporary rates at the current rate level effective March 19, 1987. On March 17, 1987, a hearing was held related to the temporary rate application. The only parties present at the hearing were the Company and the Commission Staff.

II. The Commission's Authority

The Commission's power to set temporary rates is explicitly authorized by statute. §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. of New Hampshire v. New Hampshire, 102 N.H. 66, 70, 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).

III. Findings and Analysis

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.

The Commission notes that the Company received rate relief on September 1, 1986 as a result of NHPUC Docket No. DR 85-214 and particularly Commission Order No. 18,365 (71 NH PUC 446). That increase was a result of a general rate case. In that past case, NHPUC Docket No. DR 85-214, Report and Order No. 18,365, the Company initially requested a 17% cost of

equity and, in a later update, revised its request to a 15.50% return on equity. Report and Order No. 18,365, at 45-46. With regard to cost of debt, the Company indicated a cost of debt at 11.64%. The Commission eventually authorized a 13.70% cost of equity and an 11.5% cost of long term debt. Those components of the capital structure comprised over 90% of the Company's cost of capital.

In the instant permanent rate case before the Commission, the Company prefiled testimony reflects requests of a 13% rate of return on equity and a 10.69% cost of long term debt. Assuming that all other things remain the same, such a lowering of capital costs would result in lower rates for the Company. The Company, however, anticipates that the overall effect of matters that impact the Company will result in a rate

Page 96

increase. The Company particularly claims that an increase of approximately two million dollars in rate base is not matched by increasing revenues.

The Commission is hesitant to authorize temporary rates so close to the implementation of new permanent rates based on an entire litigated rate case. However, in this instance, the institution of temporary rates at current rate levels may have the effect of benefitting customers. The testimony also reflects that significant resources of both the Company and Staff would be saved by the granting of temporary rates at current permanent rate levels rather than holding more hearings on the temporary request. Furthermore, the Commission takes notice of its Staff's operations and current docket. Such notice indicates that our Staff and the Commission currently faces a very high work load. Thus, resources saved in setting temporary rates at current permanent rate levels will result in more resources and potentially more timely action with regard to other important matters before the Commission — including the permanent rate request of this Company. For these reasons, the Commission finds it in the public interest to set temporary rates for this Company at current permanent rate levels.

SUPPLEMENTAL ORDER

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

ORDERED, that Manchester Gas Company shall be authorized to file and implement temporary rates for bills*(27) rendered on and after March 19, 1987 which set such temporary rates at current permanent rate levels; and it is

FURTHER ORDERED, that Manchester Gas Company shall on or before March 19, 1987 file tariffs appropriate to implement temporary rates.

By order of the Public Utilities Commission of New Hampshire this twentieth day of March, 1987.

FOOTNOTES

[1]All citations herein are to the New Hampshire Revised Statutes Annotated unless otherwise indicated.

*As corrected by Third Supplemental Order No. 18,612, March 24, 1987.

72 NH PUC 97

Re Stewartstown Steam Company

DR 86-98
Order No. 18,613

New Hampshire Public Utilities Commission

March 24, 1987

ORDER denying motion for rehearing of an order granting conditional approval to a petition for long-term rates for a small power production facility.

COGENERATION, § 25 — Rates — Eligibility for avoided cost rates — Effect of changes subsequent to original application.

[N.H.] A developer of a qualified cogeneration and small power production project is eligible for the avoided cost rates in effect at the time of the original rate application regardless of whether avoided cost rates are updated subsequent to the application or the application is amended, unless the amendment results in significant changes in the project proposal; accordingly, an argument by an interconnecting utility that amendments to a long-term rate application rendered a small power production project ineligible for rates in effect at the time of the original application was rejected where the amendment reflected only changes required by newly articulated commission policy and the length of the proceeding.

APPEARANCES: As previously noted.

By the COMMISSION:

Page 97

Report

I. PROCEDURAL HISTORY

On March 28, 1986 Stewartstown Steam Company (Stewartstown) filed a long term rate petition for a proposed 13.8 MW woodfired small power production facility to be located in West Stewartstown, 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 Docket No. DR. 85-215, Report and Order No. 17,838 (September 5, 1986), 70 NH PUC 753, 69 PUR4th 365

(DR 85-215). The petition requested, inter alia, a thirty year rate order and a 1988 on-line year for the Stewartstown plant. On August 25, 1986 Stewartstown filed an amendment to its rate petition requesting a twenty year rate order and a 1989 on-line year. Following five days of hearing and the submission of briefs by the parties, on February 11, 1987 the Commission by Order No. 18,573 (72 NH PUC 62) granted Stewartstown's amended petition conditional on the provision of a junior lien. Public Service Company of New Hampshire (PSNH) filed a Motion for Rehearing on March 5, 1987, and Stewartstown replied on March 11, 1987.

II. POSITION OF PARTIES

PSNH alleges that the Commission's Order No. 18,573 is unlawful, unjust and unreasonable for the following reasons:

1. It grants rates under DR 85-215 without discussing its reasons and despite its findings in Re Small Energy Producers and Cogenerators, Docket No. DR 86-134, Report and Order No. 18,334 (July 10, 1986) (71 NH PUC 408) (DR 86-134) and Re Public Service Co. of New Hampshire, Docket No. DR 86-41, Report and Supplemental Order No. 18,398 (July 10, 1987) (71 NH PUC 540) (DR 86-41) that avoided costs had fallen and even though Stewartstown amended its filing after the imposition of the moratorium on the DR 85-215 rates on June 21, 1986.

2. The project was insufficiently mature to receive levelized rates under DR 85-215.

3. The project offers insufficient security to protect ratepayers against unanticipated conditions that could impair the project's economic viability.

4. Stewartstown had not demonstrated the technical and economic viability such that it is entitled to front-loaded rates.

Stewartstown responded to each of PSNH's points in turn:

1. As the entire proceeding was conducted under the provision of DR 85-215 in accordance with the procedures established in DE 83-62 there was no necessity for the Commission to discuss the fact that it was acting in conformity with its standing practice. The fact that avoided cost estimates have declined since the filing is not relevant as under RSA 362-A:4 and the procedures established in DE 83-62, a developer is entitled to and a project is considered in relationship to the rate in existence at the time of the application. The amendment to the rate petition did not materially change the nature of the facility but merely reflected the newly enunciated Commission policy in regard to the term of rates for woodburning facilities and the length of the hearing process. Therefore, the act of amending the petition, per se, should not disqualify Stewartstown from being eligible for rates pursuant to DR 85-215.

2. The Commission has analyzed extensively the question of Stewartstown's maturity and found that it has satisfied the standard that there is a reasonable likelihood that the project will come on-line as projected.

3. The issue of security and maturity was

reviewed extensively in the Commission's order. Additional costs imposed on the project by unexpected circumstances before commercial operation are a risk of the project's sponsor.

4. The substantial evidence on the long term financial viability of the project satisfies the established standard that there is a reasonable likelihood that the plant will operate for the full term of the rate order and produce power at the indicated rates.

III. COMMISSION ANALYSIS

The Commission has reviewed the record evidence and briefs in the instant docket, its Order No. 18,573, PSNH's Motion for Rehearing and Stewartstown's Response. PSNH's argument that Stewartstown is no longer eligible for rates under DR 85-215 either because subsequent to its filing the updating of the long term rates resulted in lower avoided cost estimations, or because Stewartstown amended its filing during the proceedings, is without merit. Since the adoption of the filing procedures in DE 83-62, the Commission has deemed developers to be eligible for the rates in effect at the time of the filing. It is, in fact, this practice that underlies the importance of the maturity of projects at the time of the filing, which is a key consideration in whether or not the Commission grants a project a long term rate order pursuant to a particular avoided cost rate. The practice is consistent with the statute, RSA 362-A:4, the settlement agreement adopted in DE 83-62, and all of the rate petitions filed pursuant to DE 83-62. If PSNH wishes to advance arguments that it is more appropriate to apply the rates that are in effect at some other date than the date of the application, it may do so during the policy consideration phase of DR 86-41.

Similarly, the Commission allows all petitioners before it to amend their applications during the course of a proceeding. We have not required that they withdraw their filings and refile even when the amendments are substantive. The exception to this practice is amendments made in petitions for rates for qualified facilities when those changes result from significant changes in the project proposal itself (changes in size, location, technology, etc.). In the instant case, the amendment reflects only newly articulated Commission policy and the effect of the length of the proceeding. Such an amendment is analogous to the updating and revisions that occur in the course of any utility rate case. See, for example, Re Gas Service, Inc. — Increase in Rates, DR 85-405.

The issues raised in PSNH's Motion for Rehearing in regard to project maturity, security, and technical and financial viability were fully investigated in the five days of hearings, considered in our deliberations prior to the issuance of Order No. 18,573, and discussed in the Order itself. PSNH's Motion for Rehearing contains no new assertion of fact or argument, but is merely a repetition of the facts presented during the hearing and the arguments expressed in its brief. As such they were fully considered prior to the issuance of the Decision.

The Commission finds that the Motion for Rehearing contains no fact or argument that had not been fully reviewed prior to the issuance of Order No. 18,573, (72 NH PUC 62), that the Commission acted correctly in all areas where error was averred in the Motion for Rehearing, and that the Decision was reasonable and lawful. Accord- ingly we will deny the Motion for Rehearing.

Our Order will issue accordingly.

ORDER

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

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

By Order of the Public Utilities Commission of New Hampshire this twenty-fourth day of March, 1987.

==========

NH.PUC*03/25/87*[60188]*72 NH PUC 100*New England Telephone and Telegraph Company

[Go to End of 60188]

72 NH PUC 100

Re New England Telephone and Telegraph Company

DE 86-310
Order No. 18,614

New Hampshire Public Utilities Commission

March 25, 1987

ORDER scheduling a prehearing conference to determine the scope and procedural schedule of an investigation of a universal WATS access line tariff.

TELEPHONES, § 14 — Relations between connecting companies — Wide area telephone service — Universal WATS access line tariff.

[N.H.] Pending the results of an investigation of a local exchange telephone carriers proposed universal wide area telephone service (WATS) access line tariff, the commission required that (1) intraLATA traffic should be blocked from those carriers that do not have an approved certificate of convenience and necessity and an effective intrastate tariff on file, and (2) uncertified carriers may not directly bill customers for intraLATA usage of WATS or otherwise be an end-user of WATS; an investigation was deemed necessary because the commission had not yet allowed the provision of competitive intraLATA services.

By the COMMISSION:

ORDER

WHEREAS, on December 16, 1986, New England Telephone and Telegraph Company, (NET) filed Part A, Section 10, 3rd Revised Page 1 of its Tariff No. 75, proposing to implement a "universal" WATS Access Lines tariff for effect to enable NET to assess intraLATA OUTWATS usage charges for the use of NET facilities used to complete a jurisdictionally

intraLATA call placed by an end user employing a jurisdictionally interstate WATS Access Line (WAL) obtained under NET Tariff FCC No. 40; and

WHEREAS, such tariff was suspended pending investigation by Order No. 18,529 on January 7, 1987 in this docket;

WHEREAS, investigation indicates that the matter can not be resolved without a hearing before the Commission; and

WHEREAS, In Re Midyear 1986 Access Tariff Findings, Memorandum Opinion and Order (May 20, 1986) the Federal Communications Commission (FCC) required carriers to remove by June 1, 1986 all direct and indirect restrictions on the use of special access lines and on WATS closed ends (including blocking and screening services and restrictions on directionality) unless such features or functions are desired by customers; and

WHEREAS, in Re Midyear 1986 Access Tariff Filing, Memorandum Opinion and Order, CC Docket 86-181 (May 30, 1986) the FCC found that the above mentioned requirement did not apply where it would preempt state restrictions contained in intrastate tariffs or any state laws or restrictions limiting the scope of outside competition; and

WHEREAS, the law of the State of New Hampshire does not allow the commencement of or engagement in business as a public utility within the state of New Hampshire without first having obtained permission of the Public Utilities Commission (N.H. Rev. Stat. Ann. §374:22 I.) and the Commission has not allowed competitive provision of intra Local Access and Transport Area (LATA) service; it is hereby

ORDERED, that a prehearing conference before the Commission at its office in Concord, 8 Old Suncook Road, Building]1, in New Hampshire at ten o'clock in the forenoon on June 18, 1987 be held pursuant to N.H. Admin. Code P.U.C. §203.05, to determine the scope and procedural schedule of the investigation of the Universal WATS access line tariff; and it is

FURTHER ORDERED, that pursuant to N.H. Admin. Code P.U.C. §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

tariff is in the public good, by causing an attested copy of this Order to be published once in a newspaper having general circulation in that portion of the state in which operations are proposed to be conducted, such publication to be no later than June 4, 1987, 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 June 18, 1987; and it is

FURTHER ORDERED, that pursuant to N.H. Rev. Stat. Ann. §541-A:17 and N.H. Admin. Code P.U.C. §202.02, 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; and it is

FURTHER ORDERED, that intraLATA traffic will be blocked from those carriers who do not have an approved certificate of public convenience and necessity and an effective intrastate tariff on file with the New Hampshire Public Utilities Commission; and it is

FURTHER ORDERED, that until such time as this Commission shall decide otherwise, uncertified carriers may not directly bill customers for intraLATA usage of WATS or otherwise be an end-user of WATS; and it is

FURTHER ORDERED, that pursuant to N.H. Rev. Stat. Ann. §541-A:17 and N.H. Admin. Code P.U.C. §203.02, any party seeking to intervene in the proceeding must submit a motion to intervene, with a copy to the petitioner, at least three (3) days prior to the hearing.

By Order of the Public Utilities Commission of New Hampshire this twenty-fifth day of March, 1987.

==========

NH.PUC*03/25/87*[60189]*72 NH PUC 101*Maurice Small v. New England Telephone and Telegraph Company, Inc.

[Go to End of 60189]

72 NH PUC 101

Maurice Small
v.
New England Telephone and Telegraph Company, Inc.

DC 87-38
Order No. 18,615

New Hampshire Public Utilities Commission

March 25, 1987

ORDER requiring a local exchange telephone service subscriber to pay a deposit as a prerequisite to continued service.

PAYMENT, § 58 — Methods of enforcing payment — Security for payment — Deposit requirement — Local exchange telephone carrier.

[N.H.] Under New Hampshire Administrative Code Puc § 403.04, a utility is allowed to require a cash deposit as a condition of new or continuing service to protect against loss; accordingly, a local exchange telephone service subscriber that had been sent nine past due notices in a twelve month period and had been disconnected for nonpayment on two occasions was required to pay a deposit as a prerequisite to continued service.

APPEARANCES: Kathleen Veracco and Mary Sue Gordon for New England Telephone and Telegraph Company, Inc.

By the COMMISSION:

REPORT

I. PROCEDURAL HISTORY

A consumer complaint was filed by Dr. Maurice Small against New England Telephone (hereinafter NET or the Company) on March 10, 1987 concerning a requested deposit. A hearing on the merits was held on March 17, 1987. Dr. Small called one hour before the hearing. He stated that he

was ill and requested a continuance. He also stated that he would agree to pay the deposit by the end of March. In light of the lateness of the request for a continuance and since NET's witness had traveled from Vermont to attend the hearing, the Company was allowed to produce their evidence before the hearings examiner.

II. THE RECORD

On January 29, 1987, Janice Josinsky of NET sent a letter to Dr. Small requesting a deposit of $210.00 by March 2, 1987. The reason stated for the requested deposit was that the Company had found it necessary to contact Dr. Small frequently regarding overdue charges. Dr. Small did not respond.

On March 3, 1987 a NET representative contacted Dr. Small about his overdue balance of $278.71. This balance did not include the deposit requested. The representative also requested the afore-mentioned deposit. Dr. Small called back and stated that he never received the January 29, 1987 letter. The representative stated that the deposit was due by March 10, 1987 to avoid interruption of service on March 11, 1987. Dr. Small stated that he wanted a hearing on the matter before the Commission. The NET representative asked Dr. Small if he would agree to pay the deposit in installments of 50% then and 50% in 30 days. Dr. Small stated that he could not pay those amounts.

NET sent a letter to Dr. Small on March 3, 1987 stating that the account was overdue. The letter stated further that if payment of the deposit was not paid by March 10, 1987 service would be terminated on March 11, 1987. On March 6, 1987 Dr. Small called the NET representative to advise her that his service should not be interrupted as he had filed a complaint with the Public Utilities Commission.

The record indicates that the Company has sent Dr. Small nine past due notices in the past twelve months and has physically disconnected service due to non-payment in November of 1986 and January of 1987. The Company representative stated that this credit history was the reason for the requested deposit. The deposit was calculated by taking an average of the last six months bills, excluding the highest and lowest months and excluding the directory advertising charges and maintenance charges.

III. COMMISSION ANALYSIS

Under the N.H. Admin. Code Puc §403.04, a utility is allowed to require a cash deposit as a condition of new or continuing service to protect against loss. Under subsection (b)(1), the cash deposit must be more than $10.00 but not more than the estimated charge for utility service for a

period of two high-use billing periods. The highest-use period may not be used to determine the deposit amount. The deposit calculated in the present case falls within these rules. The request for the deposit is reasonable in this case, given the customers credit history, to protect the Company against loss.

Dr. Small stated via telephone to the Executive Director and Secretary of the Commission that he would pay the deposit by March 31, 1987. New England Telephone stated that they would accept a deposit due date of March 31, 1987. Dr. Small shall, therefore, be required to pay a deposit of $210.00 to New England Telephone on March 31, 1987. If he fails to submit this deposit, his service may be terminated on April 1, 1987.

Our Order will issue accordingly.

ORDER

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

ORDERED, that the deposit of $210.00 imposed on Dr. Small by New England Telephone and Telegraph Co., Inc. as a prerequisite to continued service is just and reasonable; and it is

FURTHER ORDERED, that this deposit

is due and owing on March 31, 1987; and it is

FURTHER ORDERED, that if Dr. Small does not pay this deposit on March 31, 1987, New England Telephone may discontinue his service on April 1, 1987

By Order of the Public Utilities Commission of New Hampshire this twenty-fifth day of March 1987.

==========

NH.PUC*03/26/87*[60190]*72 NH PUC 103*Continental Telephone Company of New Hampshire

[Go to End of 60190]

72 NH PUC 103

Re Continental Telephone Company of New Hampshire

DR 87-48
Order No. 18,616

New Hampshire Public Utilities Commission

March 26, 1987

ORDER opening a docket to investigate the provision of mandatory business usage pricing for telephone service and imposing a moratorium on mandatory usage pricing pending the results of the investigation.

RATES, § 544 — Telephone — Business subscribers — Mandatory usage pricing.

[N.H.] To aid the commission in its investigation of mandatory usage pricing for business subscribers, a local exchange telephone carrier was directed to submit a report stating the effect of mandatory usage pricing on its business customers, the reaction of its business customers, the rate structure, the revenue effect, and the carrier's position with respect to the use of waivers for certain types of residential (such as hotels) and nonprofit uses.

By the COMMISSION:

ORDER

WHEREAS, in Re Continental Teleph. Co. of New Hampshire, DR 85-219, Report and Order No. 18,129 (February 21, 1986) (71 NH PUC 130) the Commission approved a settlement among Continental Telephone Company of New Hampshire (Contel or Company), the Staff of the New Hampshire Public Utilities Commission, and the Consumer Advocate which allowed Contel to begin mandatory usage pricing for all business subscribers effective January 1, 1987; and

WHEREAS, the effective date of this order was extended 90 days by Order No. 18,536 by which Contel was required to conduct 90 additional days of dual billing due to inaccuracies in the initial phase in the Company's dual billing program; and

WHEREAS, Contel has made oral representations that there is little public objection in its service territory to mandatory usage pricing and assertions that businesses actually have supported this pricing as more fair; and

WHEREAS, the Commission recognizes that there has been considerable public objection to mandatory usage pricing in other service territories and finds it necessary to provide a forum for public comment; and

WHEREAS, the Commission believes that a consistent state policy concerning the implementation of mandatory business usage pricing is necessary; and

WHEREAS, New England Telephone and Telegraph Company, Inc. has an outstanding docket on mandatory measured business service, (DR 86-36); and

WHEREAS, before determining its policy the Commission believes it is necessary to read reports from Contel and New England Telephone which address the impact of mandatory usage pricing on business customers; and

WHEREAS, New England Telephone is required to file interim and final reports which address this impact by August 14, 1987 and November 13, 1987 pursuant to Re New England Teleph. & Teleg. Co. Measured Business Service, DR 86-36, Order No. 18,591 (March 11, 1987); it is hereby

ORDERED, that a docket is opened to investigate the provision of mandatory business usage pricing; and it is

FURTHER ORDERED, that there will be a moratorium on mandatory usage pricing until the Commission produces a final order in this proceeding; and it is

FURTHER ORDERED, that Contel provide a report on May 1, 1987 which states the effect of mandatory usage pricing on its business customers, the reaction of its business customers, the rate structure, the revenue effect, and the Company's position with respect to the use of waivers for certain types of residential (such as hotels) and nonprofit uses; and it is

FURTHER ORDERED, that the Commission shall set a hearing date after the above mentioned submission of the interim and final reports of New England Telephone; and it is

FURTHER ORDERED, that Contel notify each business customer of this proceeding by May 1, 1987 using a bill insert which contains a certified copy of this Order; and it is

FURTHER ORDERED, that business customers may notify the Commission by letter of their interest in intervening in this proceeding and therefore their desire to receive the Order of Notice by mail that states the date and time of the hearing in this docket and the requirements for intervention.

By Order of the Public Utilities Commission of New Hampshire this twenty-sixth day of March, 1987.

==========

NH.PUC*03/26/87*[60192]*72 NH PUC 105*Pinetree Power-North

[Go to End of 60192]

72 NH PUC 105

Re Pinetree Power-North

DR 86-100
Order No. 18,618

Re Pinetree Power-Berlin

DR 86-101
Order No. 18,618

Re Pinetree Power-Winchester

DR 86-103
Order No. 18,618

Re Pinetree Power Energy Corporation

DR 86-104
Order No. 18,618

Re Pinetree Power-Hinsdale

DR 86-105
Order No. 18,618

Re Pinetree Power-Lancaster

DR 86-109
Order No. 18,618

New Hampshire Public Utilities Commission

March 26, 1987

ORDER denying a motion for rehearing of a prior order that had dismissed certain long-term small power production rate filings.

---

1. COGENERATION, § 24 — Rates — Small power production — Adjudication versus rulemaking — Procedural requirements.

[N.H.] Proceedings to develop the avoided cost rates under which a particular utility must purchase power from qualifying cogeneration and small power production facilities do not constitute rule or rulemaking proceedings under the State Administrative Procedures Act, but rather are adjudicative proceedings; accordingly, the commission rejected an argument that its failure to follow administrative procedures applicable to rulemaking proceedings warranted rehearing of its decision to dismiss long-term avoided cost rate filings for certain proposed small power production facilities. p. 107.

2. PROCEDURE, § 29 — Disposal of issues — Reasons for decision — Small power production rate filing.

[N.H.] In refusing to rehear its decision to dismiss long-term avoided cost rate filings for certain proposed small power production facilities, the commission found that its decision constituted a lawful adjudicatory process inasmuch as it was the result of reasoned decision making based on the facts in evidence and the application of relevant statutory criteria. p. 107.

3. PROCEDURE, § 3 — Formalities governing commission proceedings — Small power production rate filings — Notice requirements — Official notice.

[N.H.] In refusing to rehear its decision to dismiss long-term avoided cost rate filings for certain proposed small power production projects, the commission rejected arguments that (1) the project developers had not received adequate notice of the issues upon which the commission

based its decision and, (2) the commission improperly took official notice of certain technical and scientific facts; the commission found that the developers had received notice of the issues upon which the decision was based through prehearing orders and that, under the State Administrative Procedures Act governing adjudicatory proceedings, it was free to take official notice of generally recognized technical or scientific facts within its specialized knowledge. p. 108.

---

i. COGENERATION, § 24 — Rates — Qualifying facilities — Commission duty to set rates — Statutory provisions.

[N.H.] Statement, by commission, that proposed small power production projects that are in the planning stages and have potential outstanding or undisclosed development problems are not qualifying facilities that must receive rates under the Public Utility Regulatory Policies Act or the Limited Electric Energy Producers Act. p. 109.

By the COMMISSION:

REPORT DENYING MOTION FOR REHEARING

On November 24, 1986 Pinetree PowerNorth, Pinetree Power-Berlin, Pinetree Power-Winchester, Pinetree Power Energy Corporation, Pinetree Power-Hinsdale and Pinetree Power-Lancaster (hereinafter collectively referred to as "Pinetree") filed a MOTION FOR REHEARING OF ORDER NO. 18,468 (71 NH PUC 638) pursuant to Section 541:3 N.H. Rev. Stat. Ann.[1(28)] The Motion for Rehearing was based on the grounds that the Commission's Order in this docket was unjust, unlawful and unreasonable. In this report and the order attached hereto, the Commission denies that Motion. In the discussion below, the Commission first briefly reiterates the grounds for its action in its Order No. 18,468 and then discusses the arguments raised by Pinetree.

I. The Commission Action

The Public Utility Policies Act (PURPA), and the Limited Electrical Energy Producers Act (LEEPA), Chapter 362-A, require this Commission to set rates for qualifying facilities (the term used by PURPA) and small power producers (the term used by LEEPA). The general Commission statutes, in addition to PURPA and LEEPA, govern this Commission's ratemaking actions. See e.g., § 378:10. As is further detailed in Report and Order No. 18,468, those rates shall equal the avoided cost of the utility, shall be just and reasonable to electric consumers, shall be in the public interest and shall not provide any preferential or discriminatory treatment to any qualifying facility (QF) or small power producer (SPP). Report and Order, at 16-17.

As was also outlined in the Commission's Report and Order, the Commission has via prior dockets set short and long term rates for one particular utility, Public Service Company of New Hampshire (PSNH), to pay to QFs or SPPs. Re Small Energy Producers and Cogenerators, Docket No. DE 83-62, 69 NH PUC 352, 61 PUR4th 132 (1984) (hereinafter cited as DE 83-62); and Re Small Energy Producers and Cogenerators, Docket No. DR 85-215, 70 NH PUC 753, 69 PUR4th 365 (1985) (hereinafter cited as DR 85-215). While not specifically relevant to this docket, the Commission noted in its Report and Order that it revised the rates for purchases of electricity by PSNH set in DR 85-215. See Report and Order No. 18,468, at 10. The Commission also has a docket currently before it which will once again revise those rates. N.H. PUC Docket No. DR 86-41, Re Public Service Co. of New Hampshire.

In rendering its decision in the Report and Order in this matter, the Commission relied upon the evidence presented in the hearings in this matter and on specific additional items of

knowledge of the Commission that are specifically denoted in its Report and Order. As in many Commission dockets, the Commission case file

includes materials such as prefiled testimony that other parties (here PSNH) anticipated presenting as evidence and various discovery requests and responses. The Commission did not, however, rely on those materials and specifically rejects Pinetree's allegations to the contrary.[2(29)]

As was further developed in the Report and Order, the Commission found the Pinetree evidence on its proposed projects generic in nature and lacking in specific site work of particular types. Those facts on the status of the proposed projects are indisputable no matter which way one viewed the evidence. In addition, the Commission assumed a high level of expertise and experience of the people involved in the projects. It further found that those people have a high degree of optimism over the potential viability of the proposed Pinetree projects. Considering those facts together, the Commission was unable to conclude that the projects will necessarily be on line at a specific time or that they will even surely be built (at any time). The Commission further stated that it was unable to conclude that the Pinetree evidence presented the Commission with QFs (or SPPs) as contemplated by PURPA and LEEPA, but instead merely presented proposals for QFs (or SPPs). Based on these findings the Commission declined to provide Pinetree a rate at that time. The discussion below addresses why it rejects Pinetree's arguments for a rehearing.

II. The Commission's Order Constitutes a Lawful Adjudicatory Process

[1, 2] The Pinetree Motion in several arguments states that the Commission has unlawfully and unreasonably violated, changed, increased or altered the NHPUC requirements necessary for Pinetree to receive a rate under which to sell power to PSNH pursuant to LEEPA and PURPA.[3(30)] The Commission rejects these arguments. The discussion below explains why the Commission actions that Pinetree disputes constitute lawful adjudicatory actions.

First, the Commission's development of avoided costs for PSNH under DE 83-62 and DR 85-215 does not constitute a rule or rulemaking under the State Administrative Procedures Act (APA), Chapter 541-A:1. Under that Section, rule is defined as a:

regulation, standard or other statement of general applicability adopted by an agency to (a) implement, interpret or make specific a statute enforced or administered by the agency or (b) prescribe or interpret an agency policy, procedure or practice requirement binding on persons outside the agency, whether members of the general public or personnel in other agencies.

If an agency action constitutes a rule or a proposed rule, the agency must follow the procedures for adoption of rules of the APA provided in Section 541-A:3. In contrast, a "contested case" means 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". Section 541-A:1. Such cases require the Commission to follow a procedural requirements under the APA for an adjudicative proceeding. Section 541-A:16.

The New Hampshire Supreme Court decision in Re Nationwide Insurance Co., 120 N.H. 90,

93, 94 (1983) indicates that development of a uniform policy on rate action would constitute a rule under the APA. However, development of rates for a single company based on the various facts involving that company does not constitute rulemaking. Id. The fact that the rates for the one company apply to many persons or entities does not transform a rate adjudication involving that Company into a rulemaking. See: Id.

The Commission actions in cases DE 83-62 and DR 85-215 were not actions of general applicability to all electric utilities in the State, but instead involved a development of rates for a particular utility, PSNH, to purchase power from QFs and

Page 107

SPPs. The Commission's Orders in those cases indicate that the Commission followed an adjudicatory process and based its decisions on the facts and criteria specific to PSNH. The Commission did not follow rulemaking procedures under the APA in DE 83-62 or DR 85-215.

In an adjudicatory process such as the case at bar, the Commission must issue a final order. That order must include, among other things, the reasoning behind the decision on each issue decided in the case. Section 363:17. The parties must also have reasonable notice of the issues being considered and a hearing thereon. See e.g., Re Public Service Co. of New Hampshire, 122 N.H. 1002, 1072-1074 (1982).

Turning to the Commission's Report and Order, the issues have from the beginning been the appropriateness of providing Pinetree with the DR 85-215 rates that it requested. Those issues arose from the facts relevant to the proposed projects and the relevant statutory criteria for PURPA and LEEPA rates. The Commission clearly explained its actions based upon the facts at hand and those statutes. Specifically, the Commission clearly stated findings indicating that it could not be assured of complying with the statutory criteria for QF and SPP rates if it provided the Pinetree proposed projects with a rate at this time. The Commission further found that it could not find that the Pinetree proposals have yet reached the stage of being a QF (or an SPP). Thus, the Commission clearly provided the reasons for its decision. The Commission notes that Pinetree still may receive a rate as a QF or SPP upon a subsequent application.

III. The Report and Order is Based Upon the Record Before the Commission, the Issues Raised by the Order of Notice, and Generally Recognized Technical and Scientific Facts Within the Commission's Specialized Knowledge

[3] As is discussed above, the Report and Order for which Pinetree requests rehearing denies it a rate based upon issues raised by the facts in Pinetree's evidence and the statutory criteria of PURPA, LEEPA, and Commission ratemaking statutes. These issues arise directly from the applications and evidence of Pinetree along with the statutes directly applicable to their applications. Thus, Pinetree cannot realistically claim lack of notice of issues.

In this proceeding, however, Pinetree also had notice of the issues upon which the Commission rendered its decision via a Commission order entered well before its hearing on the matter. In Order No. 18,223 (April 17, 1986) (71 NH PUC 249), the order that set up the prehearing conference to develop hearing dates and other procedures for Pinetree, the Commission indicated that the Pinetree applications raise:

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 ...

Order No. 18,223, at 2 (71 NH PUC at 249, 250). The Commission again referenced these concerns listed in Order No. 18,223 when it set the Pinetree projects for hearing. Report and Order No. 18,287, at 2 (June 4, 1986) (71 NH PUC 339).[4](31) The Commission's finding that it could not conclude that the Pinetree projects would be on line at a specific time or would even be built falls within the scope of the noticed issue of the projects' ability to come on-line at the date specified in the filings. Since this was the basic finding upon which the Commission denied Pinetree rates at this time, Pinetree clearly had notice of the issues.

Pinetree further attacks the Commission's use of "its knowledge of the volatility of energy prices and particularly oil prices and the importance of such prices to setting avoided costs based rates under LEEPA and

Page 108

PURPA." Report and Order, at 19; Pinetree Motion for Rehearing, at 10. Under the State Administrative Procedure Act governing adjudicatory procedures such as this one, the Commission may take official notice of generally recognized technical or scientific facts within the agencies specialized knowledge. Section 541-A:18. The Commission's orders in administering LEEPA and PURPA make it clear that these facts that the Commission used in Report and Order No. 18,468 (71 NH PUC 638) are basic to the agencies administrative actions in the area of ratemaking under LEEPA and PURPA. Thus, these facts that the Commission took notice of are clearly technical or scientific facts that are within the Commission's specialized knowledge.

In addition, as discussed in Section I above, the Commission rejects Pinetree's repeated arguments that the Commission may have considered prefiled testimony of PSNH in rendering its decision in Report and Order No. 18,468.

IV. The Order Does Not Violate Constitutional Equal Protection Guarantees or Statutory Requirements of PURPA and LEEPA

Pinetree alleges disparate treatment between it and other QFs or SPPs — presumably disparate treatment between the Pinetree petitions and earlier petitions of other QFs or SPPs. The Pinetree argument basically states that the Commission has acted arbitrarily. The Commission action, however, is merely an appropriate adjudicatory action as discussed above. Furthermore, Pinetree has made no showing of similar situation with other QFs or SPPs. Thus, the Commission finds this argument to constitute empty allegations and shall not further address it.

[i] Pinetree further contests the Commission's finding that the Pinetree evidence constitutes only proposals for QFs and not actual QFs. The Commission does not believe that a corporate entity in the planning stages with many potential outstanding and even undiscovered developmental problems is a QF or SPP that must at that stage receive rates under PURPA or LEEPA. Pinetree has not cited the Commission to any law or even presented a significant argument to the contrary.

V. The Order Properly Applies a Standard for a Motion to Dismiss

As is required in considering a motion to dismiss against Pinetree, the Commission considered the evidence presented in the light most favorable to Pinetree. Report and Order, at 12. Based on such a standard, the Commission found optimism on the part of Pinetree and its potential financier, Westinghouse, due to the "potential viability of the projects". The Commission also found a high level of expertise on the part of Pinetree. However, the Commission also found a lack of site specific work with regard to the project's described by Pinetree and that many steps must occur before the Pinetree projects can secure financing from Westinghouse.

The "expertise" and "high level of optimism" findings were a result of the special way in which one views the evidence in this procedural context. In contrast, the findings on the work that Pinetree had done on the projects was generally based on uncontested factual matters. Evidence to support additional findings that site specific work had been done or that financing would certainly be secured was not presented. Thus, the Commission could not make more findings on site specific work or financing in favor of Pinetree. The lack of such evidence explains the results under the Commission's order.

VI. Conclusion

Based on the foregoing and Report and Order No. 18,468, the Commission is unable to conclude that approval of the DR 85-215 rates for Pinetree is consistent with the requirements of PURPA and LEEPA. If Pinetree develops QF or SPP projects and presents the Commission with an

appropriate petition, the Commission will not hesitate to provide Pinetree with rates at that time. However, at this time the Commission denies Pinetree's Motion for Rehearing.

ORDER

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

ORDERED, that Pinetree's Motion for Rehearing be, and hereby is, denied.

By order of the Public Utilities Commission of New Hampshire this twenty-sixth day of March, 1987.

FOOTNOTES

[1]All citations herein are to the New Hampshire Revised Statutes Annotated unless otherwise noted.

[2]Pinetree alleges harm because the prefiled testimony "may" have been read or considered by the Commission or its advisory Staff. Pinetree Motion for Rehearing, pp. 15, 36.

[3]More specifically, in its first argument the Pinetree Motion states that the Commission violated its announced rules, orders, regulations and policies by denying Pinetree a rate in its Report and Order. In its second argument, Pinetree argues that the Commission unlawfully and

unreasonably imposed new prefiling requirements on Pinetree in its Report and Order. In its third argument Pinetree asserts that the Commission developed policies in dockets outside DE 83-62 and DE 85-215, which were unlawful due to lack of proper notice. Pinetree's fourth argument asserts that the Report and Order is unlawful and unreasonable because it applied more stringent standards without proper notice of the consideration of such standards. Pinetree's fifth argument asserts that the Commission's Orders, in DE 83-62 and DR 85-215 constitute rules under the State's administrative procedures act, Chapter 541-A:1 N.H. Rev. Stat. Ann. and that the Report and Order constitutes an amendment or change to those rules without following the procedures of the act.

[4]The Commission subsequently rescheduled the hearings by a letter of June 30, 1986 from Commission Secretary to all parties.

==========

NH.PUC*03/26/87*[60193]*72 NH PUC 110*Public Service Company of New Hampshire

[Go to End of 60193]

72 NH PUC 110

Re Public Service Company of New Hampshire

DR 86-41
Order No. 18,619

Re UNITIL Service Company

DR 86-69
Order No. 18,619

Re New Hampshire Electric Cooperative, Inc.

DR 86-70
Order No. 18,619

Re Granite State Electric Company

DR 86-71
Order No. 18,619

Re Connecticut Valley Electric Company

DR 86-72
Order No. 18,619

New Hampshire Public Utilities Commission

March 26, 1987

REPORT on documents marked as exhibits or entered into evidence.

PROCEDURE, § 16 — Production of evidence — Exhibits.

[N.H.] The commission marked certain documents, including responses of an electric utility to data requests of another electric utility, as exhibits, and admitted into evidence certain documents pursuant to agreement of the parties.

By the COMMISSION:

Report Regarding Exhibits in Phase I

On February 26, 1987, the Commission received a letter by the same date from Margaret H. Nelson, Attorney for Public 10Service Company of New Hampshire (PSNH), requesting that six documents be marked as exhibits in this docket. Those six documents are:

Page 110

A. Response of Granite State Electric Company to Data Request No. 25 of the Data Requests of Public Service Company of New Hampshire with respect to the Second Supplemental Testimony of Granite State Electric Company;

B. Response to Granite State Electric Company dated February 19, 1987, to Oral Data Request of Public Service Company of New Hampshire made at the hearing of January 30, 1977 (TR. VII) at Pages 138-139;

C. A copy of Order No. 84-720, In The Matter Of The Investigation of Avoided Costs and Of Cost Effective Fuel Use in Resource Development, issued by the Public Utilities Commissioner of Oregon;

D. Response of Public Service Company of New Hampshire to Supplemental Data Request from UNITIL Service Corporation;

E. Response of Public Service Company of New Hampshire to Supplemental Data Request (1) of Pinetree Power and Cogenics:

F. Response of Public Service Company of New Hampshire to Supplemental Data Request (2) of Pinetree Power and American Cogenics.

Attorney Nelson requested that the exhibits be marked as Exhibit Nos. 74-79 respectively. Ms. Nelson did not request that the exhibits be admitted into evidence. As no party has objected to the marking of these exhibits, the Commission will mark the above listed exhibits as Exhibits 74-79 respectively.

At the close of the hearings in Phase I of this matter,[1(32)] the Commission directed the parties to discuss whether they could settle on additional information that parties would desire PSNH to provide. The letter of Michael A. Walker to Mr. Arnold dated February 13, 1987, as well as comments of the Attorney for the UNITIL Companies on the record, provided the basis for this Commission action. After those discussions were held, the parties reported to the Commission, absent the court reporter, on an agreement which resulted. The items that the Commission has now marked as Exhibits 77-79 are the items that the parties agreed to. This

finding is confirmed by the letter dated February 27, 1987 to Attorney Nelson from Michael A. Walker which was received at the Commission March 2, 1987 and the responsive letter by Ms. Nelson to Mr. Arnold dated March 3, 1987 and received at the Commission on March 6, 1987. Thus, the Commission deems it appropriate to strike exhibit identification from Exhibits 77-79 and admit them into evidence pursuant to the agreement of the parties.

Finally, the Commission notes that it has not formally addressed the items properly before it for consideration of its interim order in phase I of this proceeding. The exhibits which were specifically withdrawn shall not be considered by the Commission.[2](33) In addition, exhibits which constitute testimony for which no witness appeared, will not be considered for phase I of the proceeding.[3](34) All other exhibits from exhibits 1 through 73 shall be considered by the Commission in consideration of its interim order on phase I to the extent the material in them is relevant to the issues of phase I. To the extent there is testimony in which there was direction in the record via testimony or counsel that identifies the sections which are and are not relevant to phase I, the Commission shall follow that direction. Should there be any need for clarification of what material is being considered by the Commission or correction to this Report and Order, such request should be filed within ten days of the issuance of this order.

Our Order will issue accordingly.

ORDER

Upon consideration of the foregoing Report Regarding Exhibits in Phase I, which

is incorporated herein by reference; it is hereby

ORDERED, that Exhibits 74-79 shall be marked as detailed in the foregoing Report Regarding Exhibits in Phase I; and it is

FURTHER ORDERED, that Exhibits 1-7, 10-14, 17-19, 21-26, 28-50, 52-70, 72-73 and 77-79 shall be admitted into evidence for purposes of Phase I as detailed in the foregoing Report Regarding Exhibits in Phase I.

By order of the Public Utilities Commission of New Hampshire this twenty-sixth day of March, 1987.

FOOTNOTES

[1]This proceeding has been divided into three phases as detailed in transcript pages 29-36 and the letter from Commission Counsel Rothfelder to Commission Secretary Arnold dated January 19, 1987.

[2]Exhibits specifically withdrawn are exhibits 51 and 71. They remain as exhibits but shall not be admitted into evidence for any purpose.

[3]Exhibit 8, 9, 15, 16, 20 and 27 remain marked as exhibits, but shall not be admitted into evidence at this time due to lack of supporting witnesses. The Commission anticipates that witnesses supporting these exhibits will testify in later phases of this proceeding. Similarly, the

testimony of Ralph S. Johnson, Roger F. Naill, Daniel R. Cleverdon, Richard V. Perron, Michael T. Smith, and Gordon W. Tuttle in exhibit 36; the testimony of Roger F. Naill in exhibit 37; and the testimony of Daniel R. Cleverdon in exhibit 38 shall not be admitted in evidence at this time.

==========

NH.PUC*03/26/87*[60194]*72 NH PUC 112*Winter Termination Rules

[Go to End of 60194]

72 NH PUC 112

Re Winter Termination Rules

DRM 83-31
Fourth Supplemental Order No. 18,620

New Hampshire Public Utilities Commission

March 26, 1987

REVISION of winter termination rules deemed not warranted.

RULES AND REGULATIONS, — Revision of rules — Insufficient evidence.

[N.H.] Upon review of empirical data and the results of various utility-sponsored alternative programs submitted for the evaluation of winter termination programs, the commission found that, although the winter rule continued to be of concern, there was insufficient empirical and nonempirical evidence to warrant revisions of the winter termination rules.

By the COMMISSION:

REPORT

This docket was opened by Report and Order No. 16,164 (January 25, 1983) (68 NH PUC 22) in Docket No. DRM 82-304 for the purpose of, inter alia, evaluating certain aspects of the Commission's winter termination rules pending the long term review also initiated in DRM 82-304.

As a result of several meetings of the Winter Termination Rules Committee (Committee) an agenda was established for collecting empirical data necessary to evaluate specific winter rules (see Second Supplemental Order No. 16,672, November 13, 1983 and Third Supplemental Order No. 17,145, August 8, 1984 [69 NH PUC 430]). However, the Commission noted in Order No. 16,672 that due to the lack of a comprehensive agreement among the Committee members on what data should be collected to demonstrate the need for such a revision, the parties were urged to submit, for individual review, proposals for alternative winter termination programs.

Upon review of the data submitted in this docket in addition to the results of various utility

sponsored programs,[1](35) the Commission finds that, although the winter rules continue to be of concern to the Commission, there is not sufficient empirical and nonempirical evidence to warrant rule revisions at this time. The Commission is encouraged by the actions of several electric utility companies to implement customer directed payment programs and urges the

Page 112

Committee to work independently of Commission directive toward development of program(s) which would be applicable to all New Hampshire utilities subject to the winter rules.

Our Order will issue accordingly.

SUPPLEMENTAL ORDER

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

ORDERED, that DRM 83-31 be terminated; and it is

FURTHER ORDERED, that the Winter Termination Rules Committee consisting of the following public utilities:

Concord Electric Company Connecticut Valley Electric Company, Inc. Exeter and Hampton Electric Company Granite State Electric Company New Hampshire Electric Cooperative, Inc. Public Service Company of New Hamp.Pp shire Claremont Gas Light Company Concord Natural Gas Corporation Gas Service, Inc. Keene Gas Corporation Manchester Gas Company Northern Utilities, Inc.

be dissolved until such time as the Commission deems appropriate for the purpose of any future evaluation of empirical data and alternative proposals in future dockets.

By order of the Public Utilities Commission of New Hampshire this twenty-sixth day of March, 1987.

FOOTNOTES

[1]See DE 83-297, Exeter and Hampton Electric Company — Electric Service Protection (ESP) Program, DE 84-243 ESP, DE 85-332 ESP, DR 86-210 ESP; DE 86-228, Concord Electric Company — ESP Program; DR 82-333 Part B Targeted Lifeline; DR 84-205 Targeted Termination; and, DRM 85-309 Targeted Termination — Public Service Company of New Hampshire.

==========

72 NH PUC 104

Re Public Service Company of New Hampshire

DR 87-32

Order No. 18,617

New Hampshire Public Utilities Commission

March 27, 1987

ORDER exempting from public disclosure certain material filed in support of a special contract for electric service.

PROCEDURE, § 16 — Disclosure of evidence — Protective order.

[N.H.] The New Hampshire Right to Know Law, RSA 91-A:5 IV, exempts from public disclosure "confidential, commercial, or financial information"; accordingly, the commission granted a request by an electric utility for a protective order regarding information filed in support of a special contract.

By the COMMISSION:

ORDER

WHEREAS, Public Service Company of New Hampshire (PSNH) having filed on February 27, 1987 a request for Commis- sion approval of proposed Special Contract No. NHPUC-51, between Public Service Company of New Hampshire (PSNH) and Jarl Extrusions, Inc.; and

WHEREAS, PSNH asserts that the contract was negotiated pursuant to the Special Industrial Contract Policy (SICP) approved by the Commission in DR 82-333 by Eighth supplemental Order Number 16,885 (January 30, 1984) (69 NH PUC 67, 57 PUR4th 563); and

WHEREAS, PSNH further requested that certain information filed in support of the Special Contract be placed under a protective order to avoid the material becoming a matter of public record generally available to persons not parties to this docket,

to wit: Technical Statement of Wyatt W. Brown, attachments 1, 2, 4, 5 and 6; and the actual rates included in Appendix A to the petition.

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 PSNH for a protective order regarding the above cited documents is hereby granted pursuant to RSA 91-A:5 IV, unless or until otherwise ordered; and it is further

ORDERED, that the above cited documents shall be viewed by the Commission and its staff as well as parties to any docket concerning the Special Contract; and it shall not be copied or reproduced or further disseminated, nor shall said documents become a part of a public records of the Commission unless or until otherwise ordered.

By order of the Public Utilities Commission of New Hampshire, this twenty-seventh day of March, 1987.

==========

NH.PUC*03/30/87*[60195]*72 NH PUC 113*Rist-Frost Associates, P.C.

[Go to End of 60195]

72 NH PUC 113

Re Rist-Frost Associates, P.C.

DE 87-33
Order No. 18,621

New Hampshire Public Utilities Commission

March 30, 1987

PETITION to place and maintain sewer, water, electrical and telephone crossing beneath stateowned railroad property; granted.

CERTIFICATES, § 72 — Grant of certificate — License to cross state-owned property.

[N.H.] Authority to place and maintain sewer, water, electrical and telephone crossing beneath state-owned railroad property was granted, because the crossings were proposed to meet utility requirements of a new building and all interested parties were in agreement.

By the COMMISSION:

ORDER

WHEREAS, on March 2, 1987, Rist-Frost Associates, P.C. filed with this Commission its petition seeking license to place and maintain sewer, water, electrical and telephone crossing beneath railroad property of the State of New Hampshire; and

WHEREAS, such crossings are proposed to meet the utility requirements of the new Winnipesaukee Flagship Corporation building; and

WHEREAS, similar crossings, for which license under RSA 371:17 et seq was not required, existed to support the Boston & Maine Railroad operations predating ownership of such railroad property by the State of New Hampshire; and

WHEREAS, Rist-Frost indicates it has coordinated its petition with the State of New Hampshire Department of Transportation (Railroad Division), the City of Laconia, the

Winnipesaukee Flagship Corporation and Graton Associates; and

WHEREAS, pursuant to RSA 371:20, no hearing is required if all interested parties are in agreement;

WHEREAS, the public should be afforded an opportunity to request a hearing to ensure that the requirements of RSA 371:20 have been met; 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 11, 1987; and it is

FURTHER ORDERED, that Rist-Frost Associates, P.C. effect said notification by publishing a copy of this order in a newspaper having general circulation in the area to be served by April 2, 1987; and it is

FURTHER ORDERED, NISI, that license for the crossing of State-owned railroad property in Weirs Beach, New Hampshire, as described herein and further depicted in Rist-Frost Drawings for Project No. 85-2221 on file with this Commission shall be effective on April 12, 1987 unless a request for hearing is filed with the Commission as provided above or unless the Commission orders otherwise prior to the effective date.

By order of the Public Utilities Commission of New Hampshire this thirtieth day of March, 1987.

==========

NH.PUC*03/30/87*[60196]*72 NH PUC 114*Gas Service, Inc.

[Go to End of 60196]

72 NH PUC 114

Re Gas Service, Inc.

DR 85-405
Sixth Supplemental Order No. 18,622
*(36)

New Hampshire Public Utilities Commission

March 30, 1987

ORDER adopting a stipulation agreement authorizing an increase in the rates of a natural gas distribution company.

---

1. RATES, § 373 — Natural gas distribution company — Stipulation agreement.

[N.H.] Pursuant to a commission-adopted stipulation agreement, a natural gas distribution company was authorized to file tariffs designed to provide an increase in annual base operating revenues and to commence thermal billing. p. 116.

2. RETURN, § 92 — Return of particular utilities — Natural gas distribution company — Commission adopted stipulation agreement.

[N.H.] A commission-adopted stipulation agreement authorizing a natural gas distribution

company to increase its rates utilized the following figures in determining the authorized rate of return: (a) a cost of common equity of 12.5%, (b) a cost of preferred stock of 13.7%, (c) a cost of long term debt of 11.13%, and (d) a cost of short term debt of 8% — thereby yielding a 11.74% weighted overall cost of capital. p. 116.

3. EXPENSES, § 9 — Adjustments to test year operating results — Gas distribution company.

[N.H.] The net operating income of a natural gas distribution company was based on fiscalyear-end income as adjusted for: (a) weather normalization; (b) the effect of thermal billing; (c) vehicle commuting expense; (d) electricity expense; (e) the change in the federal corporate income tax rate; (f) an allocation of computer installation expense to an affiliate; (g) interest income on overnight deposits; and (h) pro forma interest expense. p. 116.

4. RATES, § 147 — Factors affecting reasonableness — Cost of service — Federal income taxes.

[N.H.] Although it adopted a natural gas rate stipulation agreement that was based in part on a revenue requirement derived using a blended federal income tax rate of 43%, the commission instituted a docket to consider implementing temporary rates during that portion of the rate period in which the company would be taxed at a 34% rate; (under federal income tax laws the company would begin paying income tax at a 34% rate on October 1, 1987.) p. 116.

5. RATES, § 379 — Natural gas distribution company — Therm rates.

[N.H.] The commission adopted rate stipulation agreement that authorized a natural gas

distribution utility to implement thermal billing — i.e., billing customers based upon the heat content of gas rather than based upon volume. p. 117.

6. RATES, § 373 — Natural gas distribution company — Rate design.

[N.H.] Pursuant to a commission-adopted settlement agreement authorizing an increase in the rates of a natural gas distribution company, the company was directed to apportion the rate increase among all firm customer classes and charges on a pro rata basis. p. 117.

7. REPARATION, § 17 — Collections pending rate decision — Refund of overcollections — Natural gas distribution company.

[N.H.] Pursuant to a commission-adopted settlement agreement, a natural gas distribution company was directed to refund, by means of a negative surcharge, amounts collected pursuant to a temporary rate order that exceeded the amount of permanent rate relief ultimately authorized. p. 117.

8. EXPENSES, § 89 — Rate case expenses — Natural gas distribution company.

[N.H.] Pursuant to a commission-adopted rate settlement agreement, a natural gas distribution company was permitted to net its reasonably incurred regulatory expenses associated with its rate case against overcollections received pursuant to temporary rates that had been authorized pending a final rate decision. p. 117.

APPEARANCES: Charles H. Toll, Jr., Esquire, of Orr and Reno for Gas Service, Inc.; Michael W. Holmes, Esquire, for the Office of Consumer Advocate; Martin C. Rothfelder, Esquire for the Commission Staff and the Commission.

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 proposed rate schedules (tariff pages) designed to increase gross annual revenues by $1,371,468. The proposed tariffs provided that they would be effective for bills rendered on or after February 9, 1986. On February 7, 1986 the Commission issued Order No. 18,106 which suspended the proposed tariff pages pursuant to the provisions of Section 378:6 N.H. Rev. Stat. Ann.[1(37)] in order to conduct an appropriate investigation.

On January 21, 1986, the Company filed a Petition for Temporary Rates pursuant to Section 378:27. The petition requested temporary rates designed to increase gross revenues by $1,371,468, the same amount that the Company sought by its proposed tariffs filed on January 9, 1986 permanent rate filing. The petition also proposed an alternative increase in temporary rates designed to increase gross annual revenues by $634,270. The Company's petition requested that temporary rates take effect for all bills rendered on or after February 9, 1986. On February 10, 1986 the Commission issued an Order of Notice setting a hearing for March 17, 1986 on the merits of the tem- porary rate petition and on the procedural schedule for investigating the proposed permanent rates.

On March 25, 1986, the Commission issued Report & Order No. 18,182 (71 NH PUC 190) authorizing temporary rates designed to yield an increase in gross annual operating revenues of $634,270. The Commission authorized these temporary rates to take effect with all bills rendered on or after April 1, 1986. The order also provided for a procedural schedule that set hearings on the level of permanent rates for August 5, 6 and 7, 1986.

On June 12, 1986 Gas Service requested per letter from its Counsel, David Marshall, that the above schedule be amended, to allow for an opportunity to review the effect the Commission's decision in Report and Second Supplemental Order No. 18,365 in Docket No. DR 85-214, Re Manchester

Page 115

Gas Co., 71 NH PUC 446 (1986) might have on the issues in this proceeding. The Commission issued Report and Order No. 18,429 in response to the letter and rescheduled hearings for November 13, 14 and 25. The Commission later again amended the schedule to continue the hearing dates and provide for a conference to narrow issues.

On November 26, 1986 the Commission issued its Fifth Supplemental Order No. 18,489 (71 NH PUC 702) permitting the Company to file updated testimony based upon a test year ending September 30, 1986. This order also extended the effective date of the proposed tariffs that

initiated this case from February 9, 1986 to March 31, 1986. This Commission order was the result of a joint recommendation by the Company and the Commission staff.

On March 11, 1987, the Staff and Company entered into a Stipulation Agreement that, if accepted, would dispose of all issues in this docket. On March 11, 1987, the Commission held a hearing to receive evidence in this docket. The only parties present were the Staff and the Company. Those parties both recommended disposition of this docket based upon the settlement agreement and presented evidence in support of it.

II. Commission Findings, Analysis and Conclusions

[1-4] The stipulation agreement in this case recommends that the Company be authorized to file tariffs designed to provide an increase in annual base operating revenue in an amount of $451,209 and to commence thermal billing effective March 31, 1987. The agreement utilizes the following in developing a revenue requirement:

1) The rate of return consists of a cost of common equity of 12.50%, the cost of preferred stock of 13.70%, the cost of long term debt of 11.13%, and the cost of short term debt of 8%. This provided a weighted overall cost of capital of 11.74%.

2) The rate base is computed at $18,682,245.

3) The net operating income is based on the Company's fiscal year end income statement (September 30, 1986) and is adjusted for:

a. weather normalization;

b. the effect of thermal billing;

c. vehicle commuting expense;

d. electricity expense;

e. the change in the federal corporate income tax (Tax Reform Act of 1986);

f. an allocation of computer installation expense to Concord Natural Gas Company;

g. interest income on overnight deposits beyond those required for bank compensating balances; and

h. pro forma interest expense.

The agreement further indicates that a "blended" federal tax rate of 43% was utilized in the calculations of revenue requirement. According to the testimony before the Commission, this rate is a result of the Company's fiscal year 1987 ending September 30, 1987, and the two different federal corporate income tax rates in effect during this time period. These tax rates are a 46% rate in effect until July 1, 1987 and a 34% rate thereafter. The 43% rate is calculated as follows: 43% = (34% × 3/12) + (46% × 9/12).

The Commission finds the revenue requirement as developed above supported by the evidence before it and accepts it for resolution of this particular docket in accordance with the agreement. However, the

record reflects that use of the 43% tax rate beyond September 30, 1987 may be inappropriate. The Company clearly faces a 34% corporate federal income tax rate beyond that point. Furthermore, federal income tax is clearly an important aspect of revenue requirement. Thus, while the Commission accepts as reasonable the 43% rate for setting rates in this docket, the Commission finds it appropriate to consider implementing temporary rates under section 378:27 on October 1, 1987 in order to investigate the need for a rate reduction related to the Company's reduced federal income tax liability. The attached order takes such action.

[5] The agreement also provided for "thermal billing". Thermal billing involves billing customers based upon the heat content of the gas in contrast to the present practice of billing based upon volume. This change in billing is estimated to generate an additional $136,275. The agreed to rate increase takes this fact into consideration, for without the change to thermal billing the parties would have recommended rates designed to increase revenues by an additional $136,275. The Commission finds the transition to thermal billing and related adjustments supported by the evidence before it and accepts it for resolution of this docket.

[6] The Settlement Agreement further provides for a rate design that apportions the rate increase among all firm customer classes and charges on a pro rata basis. The expert testimony before the Commission supports this rate design. The testimony and agreement indicates that for rate class D, which covers most residential ratepayers,[2](38) this rate design will result in a customer charge of $3.32; the first 80 therms of gas will be $0.7007 per therm and all gas beyond 80 therms will be $0.6461 per therm. For rate class G, general use, this rate design results in a customer charge also of $3.32; the first 200 therms of gas will be $0.7007 per therm; and gas over 200 therms will be $0.6461 per therm. The Commission finds that this rate design is supported by the testimony before it and that the rates discussed above that result from the stipulated rate design and revenue requirement are just and reasonable.

[7, 8] The agreement also provides for a refund relating to the amount that the temporary rate relief exceeds the recommended permanent rate relief. This refund is segregated into two parts. The first part related to temporary rates through September 30, 1986. Under the agreement and evidence before the Commission, a refund of $113,049 is appropriate for this period. The second part of the refund relates to the period after September 30, 1986 until the implementation of permanent rates on March 31, 1987. The amount of the sec- ond part of the refund will be determined prior to May 1, 1987.

Under the agreement and the evidence supporting it, the full combined refund amount should be refunded by a negative surcharge over the period of one year beginning on May 1, 1987. The agreement further provides for recovery of reasonably incurred regulatory expense for this proceeding over the same time period and netted against the negative surcharge. The agreement indicates that the Company shall file an appropriate surcharge tariff and supporting information on or before April 15, 1987. Presumably, whatever Staff review and/or hearing needs to take place related to the regulatory expense will occur prior to May 1, 1987.

The Commission finds the surcharge relating to overcollection of temporary rates and reasonably incurred regulatory expense to be a reasonable proposal and accepts it for purposes of the disposition of this proceeding. The Commission encourages both the Company and the Staff to act expeditiously on the consideration of regulatory expense and the surcharge tariffs so that

the Commission may implement the surcharge in a timely and orderly fashion.

While the Commission approves the settlement presented to it for disposition of this case, the Commission also indicates that the update that Gas Service, Inc. was allowed to file is a procedure which it generally does not allow. Filing of new schedules and testimony based upon a new test year

is, for all practical purposes, the filing of a new rate case. The Commission generally expects this and other companies before it to provide evidence which supports its rate increase along with its initial filing. Such evidence should generally include test year data which is recent. The allowance of complete updates and changes requires the Commission and Staff to begin its investigation again and creates a moving target like the one this Commission discussed in its Report and Order No. 18,365, Re Manchester Gas Co. (NHPUC Docket No. DR 85-214). However, the desire of the parties to consider a Commission rate order on an affiliated Company's rate case and the Company's agreement to extend the effective dates on the proposed tariffs which initiated this proceeding allow the Commission to, in this instance, authorize the updated material.

In summary, the Commission finds the agreement among the parties to be a reasonable resolution of this docket and accepts it for those purposes. In addition, the Commission is concerned that the significant reduction in the federal corporate income tax rates should make it consider implementing temporary rates for this Company for service rendered on and after October 1, 1987. Thus, the attached order authorizes

the disposition of this case under the agreement and deals with this additional concern of the Commission.

Our Order will issue accordingly.

SUPPLEMENTAL ORDER

Upon consideration of the foregoing Report, which is incorporated herein by reference; it is hereby

ORDERED, that the proposed rate schedules (tariffs) filed by Gas Service, Inc. on January 9, 1986, which were designed to increase gross annual revenues by approximately $1,371,468, are rejected; and it is

FURTHER ORDERED, that Gas Service, Inc. shall be authorized to file tariffs designed to increase gross annual revenues in the amount of $451,209, effective for bills rendered on and after March 31, 1987, under the rate design provided for in the foregoing Report; and it is

FURTHER ORDERED, that Gas Service, Inc. shall implement thermal billing, as provided for in the foregoing Report, effective for bills rendered on and after March 31, 1987; and it is

FURTHER ORDERED, that Gas Service, Inc. shall, on or before April 15, 1987, file its surcharge tariff as described in the foregoing Report and shall also file on or before April 15, 1987 supporting materials under affidavit; and it is

FURTHER ORDERED, that the Commission Secretary shall institute a docket and cause a

procedural schedule to be set to consider implementation of temporary rates beginning October 1, 1987 as described in the foregoing Report; and it is

FURTHER ORDERED, that tariffs related to the March 31, 1987 increase authorized above shall be filed on or before March 31, 1987.

By Order of the Public Utilities Commission of New Hampshire this thirtieth day of March, 1987.

FOOTNOTES

*As amended by Seventh Supplemental Order No. 18,633, April 9, 1987.

[1]All citations herein are to the New Hampshire Revised Statutes Annotated unless otherwise noted.

[2]Under Gas Service, Inc. tariffs, rate class D is for domestic use which is separately metered and billed for each dwelling unit. It is also for domestic use when the total rated hourly input of appliances connected to the separately billed meter does not exceed five (5) therms per hour. Availability, is limited to use in locations reached by the Company's mains and for which its facilities are adequate.

==========

NH.PUC*03/31/87*[60197]*72 NH PUC 119*Granite State Electric Company

[Go to End of 60197]

72 NH PUC 119

Re Granite State Electric Company

DR 87-20
Order No. 18,623

New Hampshire Public Utilities Commission

March 31, 1987

ORDER authorizing an increase in the purchased power adjustment clause rate of an electric utility.

---

1. AUTOMATIC ADJUSTMENT CLAUSES, § 13 — Purchased power — Retail electric utility.

[N.H.] A retail electric utility was authorized to increase its purchased power cost adjustment clause rate to reflect an increase in the cost of power purchased from its wholesale electric power supplier; if the wholesale rates charged by the supplier are adjusted by the Federal Energy Regulatory Commission, any refund received by the wholesale utility pursuant to the adjustment would be passed through to the customers of the retail utility through the purchased power

adjustment clause. p. 119.

2. AUTOMATIC ADJUSTMENT CLAUSES, § 13 — Purchased power — Retail electric utility.

[N.H.] A retail electric utility was authorized to increase its purchased power cost adjustment clause rate to reflect an increase in the cost of power purchased from its wholesale electric power supplier where the evidence indicated that the retail electric utility had acted reasonably in entering an agreement to purchase power from the wholesale supplier. p. 119.

APPEARANCES: Philip H. R. Cahill, Esq. for Granite State Electric Co.; Daniel Lanning, Commission Assistant Finance Director, for the Commission Staff and the Commission.

By the COMMISSION:

I. INTRODUCTION

On February 4, 1987 the Commission received a request for an increase of the rates of Granite State Electric Company pursuant to that Company's purchased power cost adjustment provisions of its currently effective rate schedule (tariff). Under that proposal, the rates of Granite State Electric Company (Granite State) would increase by .042 per kilowatt hour. This report and order authorizes the increase.

II. PROCEDURAL HISTORY

On February 13, 1987 the Commission issued an Order of Notice setting this matter for hearing on March 5, 1987. The Order of Notice ordered the petitioner, Granite State, to provide publication of the Order of Notice no later than February 19, 1987 and to provide the Commission with an affidavit to the publication of that notice. On February 25, 1987 the petitioner filed the affidavit of publication.

On March 5, 1987, the Commission held the hearing in this matter. At the hearing, the petitioner presented two witnesses. Pursuant to requests made during the hearing, on March 16, 1987 the petitioner provided late filed Exhibit No. 4 and Exhibit No. 5. Exhibit numbers were reserved for those exhibits during the March 5, 1987 hearing.

III. COMMISSION FINDINGS, ANALYSIS AND CONCLUSIONS

[1] The evidence in the record indicates that the requested increase in rates is a result of requested increase by New England Power Company — Granite State's supplier of electricity. NEP requested an increase of the Federal Energy Regulatory Commission (FERC). Pursuant to procedures authorized under the Federal Power Act, FERC suspended the proposed increase until April 1, 1987. On April 1, 1987, the full amount of the NEP requested increase will go into effect — except for portions of the requested increase related to the actual commercial operation of the Seabrook l nuclear power plant.

Granite State must pay those increased rates to NEP commencing April 1 even though the rates are subject to retroactive reduction and refund upon eventual FERC disposition of the case.

Under the Granite State Purchased Power Adjustment tariff, increases in the cost of purchased power which are reasonably incurred are included in Granite State's rates. Any refunds to Granite State provided by FERC retroactive reduction are also eventually provided to the Granite State ratepayers under the operation of the same Granite State tariff.

The .042 per kwh amount of the requested increase includes consideration of a "reconciling adjustment". This adjustment is designed to properly reflect the amount of purchased power per kwh in base rates and adjust the purchased power adjustment clause accordingly. The adjustment reduces the purchased power adjustment clause by .015 per kwh. The overall requested adjustment of .042 per kwh includes this adjustment. Based upon the record before the Commission, the Commission finds the calculation of the .042 per kwh reasonable.

[2] During the course of the hearing, Granite State witnesses presented evidence on the reasonableness of purchasing power from New England Power Company. The testimony focussed upon the supply alternatives for Granite State and upon the seven year notice of termination provision in the NEP tariff under which Granite State purchases power. The testimony generally indicated that receiving supply from New England Power Company was an appropriate choice for Granite State Electric Company.

Both witnesses presenting this analysis were employees of New England Power Company. Granite State Electric Company and New England Power Company are both owned by the same parent company. There was no other testimony or analysis addressing the petitioners purchasing practices. Based upon the record before it, the Commission concludes that Granite State's practice of purchasing power from New England Power Company, is reasonable.

Since the Commission finds the purchases and calculation reasonable, the Commission authorizes the requested increase.[1](39) Our order will issue accordingly.

ORDER

Upon consideration of the foregoing Report, which is incorporated herein by reference; it is

ORDERED, that late filed hearing Exhibits No. 4 and 5 are accepted and received into evidence; and it is

FURTHER ORDERED, that the rate increase proposed by the tariffs filed on February 4, 1987 is hereby approved.

By order of the Public Utilities Commission of New Hampshire this thirty-first day of March, 1987.

FOOTNOTES

[1]The commission has been advised that on March 27, 1987, the Commission General Counsel received a communication from Granite State agreeing to defer billing the increase as long as Granite State could collect, with interest, any increase that might result from the FERC case. The proposal apparently tracks a similar proposal successfully pursued by the Rhode Island Attorney General and is based upon the likelihood of the FERC NEP case resulting in a decrease from current rates. Because of the lateness of this proposal, its informality, its lack of detail, and its nonconformance with established tariffs, the Commission reluctantly concludes that it may

not pursue that option at this time.

==========

[Go to End of 60199]

72 NH PUC 120

Re Public Service Company of New Hampshire

DF 87-4
Order No. 18,624

New Hampshire Public Utilities Commission

March 31, 1987

ORDER granting, in part, a motion for disclosure concerning the commission's official notice of matters obtained outside the record.

Page 120

i. EVIDENCE, § 3 — Official notice — Material obtained outside the record — Disclosure requirements.

[N.H.] Discussion of disclosure requirements with regard to official notice of matters obtained outside the record; includes statement by commission that it is unaware of any law that would require it to provide detailed findings on the relevancy of noticed material obtained outside the record — particularly when there has been no objection raised as to the relevancy of the material. p. 122.

By the COMMISSION:

Report Regarding Motion for Disclosure

On March 17, 1987 the Commission received a Motion for Disclosure from Public Service Company of New Hampshire (PSNH). This Report discusses the procedural history related to the Motion, the Positions of the Parties, the analysis of the Commission and the Commission's conclusions. The Report and attached Order states that the issues have already been disclosed and that the material noticed is relevant to the determination of the scope of this proceeding.

I. Procedural History

On March 12, 1987 the Commission sent a notice to the parties in this case via a letter from its Executive Director & Secretary indicating that the Commission will take notice of various materials related to PSNH. Those materials consisted of the following:

Exhibits in Commission Docket No. DR 86-122:

Exhibit 37 (Form S-1, Public Service Company of New Hampshire Securities and Exchange Commission Registration No. 2-92102).

Testimony and Exhibits in Commission Docket No. DR 86-41:

Testimony of Wyatt Brown, 6 Tr. 106114, 8 Tr. 119-123, 9 Tr. 29-57; Testimony of Bruce Ambrose, 10 Tr. 73-74; Testimony of Roger Naill, Exhibit 37, 21-38; and Exhibits 58, 59, 60.

On March 17, 1987 PSNH filed a Motion for Disclosure (PSNH Motion) related to the March 12, 1987 notice. On March 17, 1987 the Commission provided further notice to the parties via another letter by its Executive Director & Secretary. This notice indicated that the Commission would also take notice of the testimony of Wyatt Brown in Commission Docket No. DR 86-41 at 5 Tr. 26-27. On March 20, 1987 the Commission received a letter via PSNH Counsel dated March 19, 1987 requesting that the Commission consider its Motion for Disclosure as addressing the item of the Commission's March 17, 1987 communication to the parties. On March 20, 1987, the Consumer Advocate filed an Objection to the PSNH Motion for Disclosure, and on March 27, 1987 PSNH filed a Reply to the Consumer Advocate's Objection.

At this stage in the proceedings, the Commission has indicated that it shall decide the scope of this proceeding based on discussion at an on the record proceeding on March 6, 1987, and the written memoranda and submittals of parties and the material noticed by it. Tr. 44.

II. Positions of Parties

PSNH takes the position that it is required to receive "disclosure" from the Commission of "the purposes of the proposed administrative notice, including specification of the materiality and relevancy of each of the items proposed by noticed". Its motion seems to request "disclosure" with regard to the matter currently pending in the case which, as PSNH's motion states it, is: "determination of the proper scope of the proceeding". (PSNH Motion, at 2). In its Motion, PSNH states that:

under Re Public Service Co. of New Hampshire, 122 N.H. 1062, 1073, 51 PUR4th 298, 454 A.2d 435 (1982) issues determined must be within the stated purposes of a proceeding and parties are entitled to notice which gives them the opportunity to understand and be heard on the issues being litigated.

PSNH Motion, at 2. (citation corrected).

The Consumer Advocate, in opposing the PSNH motion, asserts that PSNH has received all the appropriate notice and opportunities to contest the noticed material, but further asks that PSNH receive a clear opportunity to contest the material noticed from dockets DR 86-122 and DR 86-41. In support of his argument the Consumer Advocate quotes the following from Re Public Service Co. of New Hampshire, supra, 122 N.H. at 1075, 51 PUR4th 298:

The PUC must bring to its decision making an expertise and knowledge of the industries it regulates. It must obtain reports, statistics and data from the companies that appear before it. The problem here was an ongoing contested hearing where counsel for PSNH was not aware of the

information obtained from its client until after the hearing.

The Consumer Advocate also states that the relevance of the noticed material is clear.

III. Commission Analysis and Conclusions

[i] The Supreme Court of this State has clearly placed upon this Commission a duty to investigate financings which Companies such as PSNH requests Commission approval of pursuant to New Hampshire Statutes. Re Easton, 125 N.H. 205, 213, 480 A.2d 88 (1984). Such investigation must generally go beyond the terms and conditions of the financing. Id. The Supreme Court has recognized the role of Commission discretion in determining the exact scope of its investigation and considerations in such proceedings. Re Seacoast Anti-Pollution League, 125 N.H. 465, 472, 475, 482 A.2d 509 (1984).

In considering the appropriate scope of the financing proceeding before it, the Commission requires a base of relevant factual matters before it with regard to the facts of the particular company it is investigating. The need to obtain such facts was addressed by the Supreme Court in Re Public Service Co. of New Hampshire, supra, in the language quoted above. Without such facts, the Commission would be exercising the discretion in a factual vacuum. Certainly, that is not the intent of the statutes on Commission financing approval or the above cited Supreme Court cases addressing it.

In Re Public Service Co. of New Hampshire, supra, the Court found it a violation of due process for the Commission to make findings regarding prudence based upon information obtained outside the hearing process and without notice to Company Counsel. Both the process of receiving the information, and the finding on prudence in a proceeding which did not directly involve prudence are actions that the Supreme Court seemed to find improper. The Commission is unaware of any language in this case or any requirements of law in general which requires it provide detailed findings on relevancy with regard to each and every document which it takes notice of — particularly when there is no objection to the relevancy of it.

Turning to the particular motion of PSNH, the motion seems to request disclosure of the issues before the Commission and requests disclosure of particular findings on relevancy. The issue before the Commission has not changed since the on the record proceeding held on March 6, 1987. The issue before the Commission is still, as PSNH itself stated, the determination of the proper scope of the proceeding. The Commission finds that it is not possible to state the issue with more clarity or with any more meaningful detail.

With regard to providing an explanation of the relevancy of the materials it is

noticing, the Commission agrees with the PSNH Motion that the materials noticed by the Commission provides a broad range of information relating to its current operations and finances and related certain expectations and assumptions and plans regarding its future. Such information is unquestionably relevant to a consideration of what should be investigated or considered during the course of a proceeding on its financing. The Commission further notes that the situation at hand is not comparable to that in Re Public Service Co. of New Hampshire, supra, for the issue before the Commission and the information being utilized is clear to all.

While the Commission believes it has already provided adequate time to PSNH and other parties to contest or request procedures to contest the material noticed, the Commission will consider addition requests received by the Commission on or before April 2, 1987.

Our Order will issue accordingly.

ORDER

Based upon the foregoing Report Regarding Motion for Disclosure, which is incorporated herein by reference; it is

ORDERED, that PSNH's Motion for Disclosure, as amended by the PSNH letter received on March 20, 1987, is granted to the extent that the foregoing Report Regarding Motion for Disclosure provides additional information and disclosure; and it is

FURTHER ORDERED, that the Commission will consider additional material to contest the noticed materials or requests for hearings for such purposes that are filed on or before April 2, 1987; and it is

FURTHER ORDERED, that PSNH or other parties are free to renew a motion for disclosure or objections to relevancy with regard to noticed materials when the Commission considers the merits of authorizing the requested financing.

By order of the Public Utilities Commission of New Hampshire this thirty-first day of March.

==========

NH.PUC*04/02/87*[60200]*72 NH PUC 123*Public Service Company of New Hampshire

[Go to End of 60200]

72 NH PUC 123

Re Public Service Company of New Hampshire

DR 87-45
Order No. 18,625

New Hampshire Public Utilities Commission

April 2, 1987

ORDER denying a petition for a consolidated short term avoided cost rate proceeding.

COGENERATION, § 25 — Rates — Short term avoided costs — Procedure.

[N.H.] The commission denied an electric utility's petition for a consolidated short term avoided cost rate proceeding based on its findings that (1) the utility's argument in support of the petition erred in alleging that its short term rates exceeded those of other utilities, (2) the issue of short term rates has a de minimus effect on ratepayers exposure to qualifying facility purchases as only 7.57 MW of installed capacity is purchased state-wide on the short term rate, and (3) a

consolidated proceeding could not be expeditiously, fairly and efficiently resolved prior to resolution date requested in the petition.

By the COMMISSION:

ORDER

WHEREAS, on March 20, 1987 Public Service Company of New Hampshire (PSNH) petitioned the Commission to initiate a consolidated short term avoided cost proceeding averring that PSNH had petitioned on February 7, 1986 that the Commission examine the short term rates established in Re Small Energy Producers and Cogenerators, Docket No. DE 83-62, 69 NH PUC 352, 61 PUR4th 132 (1984) and the Commission subsequently opened dockets Re UNITIL, Docket No. DR 86-69, Re New Hampshire Electric Coop., Docket No. DR 86-70, Re Granite State Electric Co., Docket No. DR 86-71, Re Connecticut Valley Electric

Page 123

Co., Docket No. DR 86-72, and Re Public Service Co. of New Hampshire, Docket No. DR 86-41, to consider, inter alia, short term avoided costs rates; and

WHEREAS, PSNH notes that all parties to the said dockets, except for PSNH, entered into a Settlement Agreement in which they recommended that the currently applicable short term arrangements remain in effect until July 1987 and that a procedural schedule be established to consider any proposed changes in the short term methodology and procedures prior to July 1987; and

WHEREAS, PSNH alleges that it believes that as a result of the differing methodologies employed, its short term rates are the highest of any electric utility in the state and therefore PSNH and its ratepayers are subjected to inequitable exposure for purchases from qualified facilities (QF's); and

WHEREAS, PSNH avers that as the issues presented by the calculation of the short term avoided costs are not as complex as those presented by the calculation of long term avoided costs, an expedited consolidated proceeding could fairly and efficiently be resolved prior to July 1, 1987; and

WHEREAS, when the parties to the Settlement Agreement recommended that the short term avoided cost rates be considered prior to July 1987, they had not envisaged that the technical Settlement Agreement itself would be the subject of extensive litigation, including 13 days of hearings and a briefing schedule, and therefore assumed that consideration of the long term rates would be concluded in time for a subsequent proceeding on the short term rate to be initiated and concluded before July 1, 1987; and

WHEREAS, PSNH errs when it alleges that its short term rates (3.17/KWH) exceed those of all other New Hampshire utilities as the rates paid by Connecticut Valley Electric Company (7.8/KWH) are more than double those of PSNH and the rates paid by the New Hampshire Electric Cooperative either equal PSNH's, or following the May 1, 1987 wholesale rate increase to 3.517/KWH, will exceed PSNH's; and

WHEREAS, the rates paid by Granite State Electric Company (2.718/KWH) and UNITIL (2.968/KWH) are not significantly below those paid by PSNH; and

WHEREAS, the issue of short term rates has a de minimus effect on ratepayers exposure to QF purchases as only 7.57 MW of installed capacity (gross) is purchased statewide on the short term rate, of which only 5.225 MW is purchased by PSNH; and

WHEREAS, the Commission finds it unlikely that any consolidated proceeding involving PSNH and all other utilities in the state as well as representatives of qualified facilities can be expeditiously, fairly, and efficiently resolved prior to July 1, 1987; it is therefore

ORDERED, that the Petition of Public Service Company of New Hampshire for Consolidated Short Term Avoided Cost Rate Proceedings be, and hereby is, denied; and it is

FURTHER ORDERED, that if PSNH renews its petition, it serve such petition on all parties to DR 86-41, DR 86-69, DR 86-70, DR 86-71 and DR 86-72.

By Order of the Public Utilities Commission of New Hampshire this second day of April, 1987.

==========

NH.PUC*04/03/87*[60201]*72 NH PUC 124*Public Service Company of New Hampshire

[Go to End of 60201]

72 NH PUC 124

Re Public Service Company of New Hampshire

DF 87-4
Supplemental Order No. 18,626

New Hampshire Public Utilities Commission

April 3, 1987

ORDER regarding the proper scope of proceedings to consider whether a utility may seek financing by the issuance of securities.

Page 124

1. SECURITY ISSUES, § 132 — Scope of proceedings — Generally — Proposed financing.

[N.H.] Although the scope of finance proceedings must be broad and the consideration by the commission of the public good may extend beyond the terms of the proposed financing of a utility when, for example, there are reasonable grounds to believe that there has been a material change of circumstances affecting the ability of the utility to support its capitalization with reasonable rates, the scope may nonetheless be narrow when: (1) the purpose of the financing is to undertake "routine construction" and giving a broad scope to the proceedings may delay the

financing by a year or more; (2) in a later proceeding, parties opposed to the financing will have an opportunity to address all changed circumstances that may have occurred since the approval of the prior financing, and the commission will have the opportunity to give the proposal a broad review; (3) the giving of a broad review to both the later proceeding and the present one, which proceedings are to be conducted simultaneously, would not serve the purpose of administrative efficiency; and (4) merely narrowing the scope of the proceeding does not preclude the parties from litigating the necessity of the proposed financing. p. 129.

2. SECURITY ISSUES, § 132 — Scope of proceedings — Generally — Proposed financing — Possible bankruptcy.

[N.H.] The scope of a finance proceeding need not include the possibility of the bankruptcy of the utility where (1) the financing approval being sought does not relate to the project that is the source of the financial difficulties of the utility, (2) bankruptcy is not an alternative to the routine operation and maintenance of service that the financing would provide, and (3) the bankruptcy issue had been examined in a prior proceeding and may well be examined in a later one. p. 131.

i. SECURITY ISSUES, § 132 — Scope of proceedings — Generally — Proposed financing.

[N.H.] Discussion, in dissenting opinion, of the proper legal standard of review and scope of review to be applied to a proposed long-term financing in light of changes alleged to have adversely affected the ability of the utility to support its capitalization with reasonable rates and recover its costs. p. 133.

ii. SECURITY ISSUES, § 54 — Factors affecting authorization — Rates.

[N.H.] Discussion, in dissenting opinion, of the standards for determining whether the capitalization of a utility can be supported by reasonable rates if it is allowed to seek further financing. p. 136.

By the COMMISSION:

REPORT

On January 16, 1987, Public Service Company of New Hampshire (PSNH) petitioned this Commission for authority to issue securities for non-Seabrook purposes in an amount not to exceed $360,000,000. The securities were intended to yield approximately $240,000,000 for "... general corporate purposes but not for the purposes of making additional cash investment in Seabrook Station or paying any expenses associated with existing indebtedness of the Company."

On February 9, 1987, an Order of Notice was issued directing that a prehearing conference be held at the Commission's Concord offices at ten o'clock in the forenoon on March 5, 1987. A revised Order of Notice was issued on February 10, 1987 setting the prehearing conference at ten o'clock in the forenoon on March 6, 1987. On February 27, 1987, the Company notified the Commission by letter that publication of a legal notice had been made in according with the Commission's Order of Notice.

Requests for intervention were made by Consumer Advocate Michael W. Holmes, Esquire and Joseph W. Rogers, Esquire as attorneys for the residential ratepayers, Paul McEachern, Esquire on behalf of the Campaign for Ratepayers, Rights, and Michael A. Walker, Esquire on behalf of American Cogenics, Incorporated. The Commission

considered and allowed intervention by all requesting parties.

A motion of March 4, 1987 by the Consumer Advocate to continue the prehearing conference was withdrawn at the procedural hearing. A March 4, 1987 motion by the Consumer Advocate for a procedural schedule was also withdrawn at the procedural hearing.

On March 5, 1987, PSNH filed an amended petition, reducing the face amount of the proposed financing from $360 Million to $220 Million with the resulting net proceeds reduced from $240 Million to $145 Million. The Company contended that the purposes of the non-Seabrook financing had been narrowed to non-Seabrook related construction expenses through the end of 1988. PSNH filed a statement re "Scope of Proceeding":

1. Whether the terms and conditions of the proposed financing are reasonable.

2. Whether the purposes of the proposed financing are for the public good, i.e., is it for the public good to permit PSNH to obtain financing for two years of nonSeabrook construction expense.

3. Whether the improvements to be supported by the proposed financing are economically justified when measured against the possible alternatives.

4. Whether the capitalization resulting from the proposed financing can be supported by reasonable rates.

At the hearing, Commissioner Aeschliman asked the following question:

If the Commission has substantial concerns about the validity of its findings in DF 84-200 relative to the continuing financial viability of the Company and the ability of the Commission in a future Seabrook rate case to meaningfully consider the interests of consumers because of substantially changed circumstances*, can the Commission:

1. approve any financing without conducting an Easton review relative to the questions of financial feasibility;

2. initiate a proceeding to consider the Easton issues and approve limited financing for proper non-Seabrook purposes pending completion of the Easton review.

*The changed circumstances since the decision in 1985 include Seabrook costs and schedule and changed market conditions. The changed market conditions, which have adversely affected the competitive position of the Company, are sharply lower interest rates and lower costs for competing fuels.

The parties were given until March 13, 1987 to address the scope of inquiry and to answer

the question posed by Commissioner Aeschliman.

On March 12, 1987, the Commission advised all parties that it will take notice of the following:

DR 86-122 — Exhibit 37, form S-1, PSNH and SEC Registration No. 2-92101

DR 86-41 - Testimony of Wyatt Brown, 6 Tr 106-114, 8 Tr 119-123, 9 Tr 29-57

Testimony of Bruce Ambrose, 10 Tr 73-74

Testimony of Roger Naill, Exhibit 37, 21-38; and Exhibits 58, 59 and 60

On March 17, 1987, the Commission advised the parties that the list was expanded to include the testimony of Wyatt Brown in DR 86-41, 5 Tr 26-27.

On March 17, 1987, PSNH filed a motion for disclosure "... of the purposes of the proposed administrative notice, including specification of the materiality and relevance of each of the items proposed to be noticed."

On March 20, 1987, the Consumer

Page 126

Advocate filed his objection to the PSNH motion to disclosure.

I. SCOPE OF PROCEEDINGS

All parties filed memoranda regarding the scope of the proceedings. Their positions follow.

A. Public Service Company of New Hampshire

The Company supports the scope as set forth earlier in this report. It contends that it does not have sufficient funds from internal sources to cover the capital costs of certain improvements, including Millstone capital additions and reloads, steam generation, transmission, hydro, general construction, distribution and "other", which includes buildings, vehicles and computers. It offers to provide assurance about the use of the proceeds — it will exclude all Seabrook-related costs — accounting for them in a segregated account with monthly detailed statements covering expenditure of the funds.

Since non-Seabrook construction is a necessity for PSNH and since external financing for such construction is both legally and financially necessary, then to the extent an Easton inquiry is necessary in this case, it should be directed at the specific improvements to be supported by this financing and whether the capitalization resulting from this financing can be supported by reasonable rates.

PSNH contends it will run short of cash between the end of June and the end of July, 1987, approximately two months ear- lier than previously estimated. It proposes to submit another financing petition intended to cover its external cash needs for Seabrook-related expenses and debt service not covered by internal sources, no later than April 17, 1987.

The Company contends that previous decisions of the Court and the Commission support tailoring the scope of this proceeding to the purpose of the proposed financing. The Court's decisions affirming the Commission's determination unequivocably established that the

Commission has authority to allow PSNH's proposed financing to proceed based on an inquiry appropriate to its stated purpose while providing for an appropriate re-examination of the findings in DF 84-200, if necessary, in a separate proceeding. Re Public Service Co. of New Hampshire, DF 84-167, Report and Order No. 17,141, 69 NH PUC 422 (1984); Re Seacoast Anti-Pollution League, 125 N.H. 465, 474, 482 A.2d 509 (1984) (SAPL I); Re Seacoast Anti-Pollution League, 125 N.H. 708, 714, 715, 482 A.2d 1196 (1984) (SAPL II).

In reviewing the Commission's scope order in DF 84-167, the Court affirmed the Commission's decision to carry out a limited inquiry. The Company draws a direct parallel to that case in this proceeding and contends that all the circumstances that led the Commission to decide that a limited inquiry in DF 84-167 was appropriate, are present again in this case. It takes the position that there will be adequate opportunity for an expansive Easton review in the subsequent Seabrook-related financing case to provide a realistic opportunity for an inquiry into the public good of the Seabrook investment and PSNH's financial future.

In response to Commissioner Aeschliman's questions, PSNH answers both questions in the affirmative.

B. Campaign for Ratepayers' Rights

Campaign for Ratepayers' Rights (CRR) contends that the "... so called death spiral has started", and questions whether PSNH can survive even if given the financing relief requested.

The law is clear to CRR that all the circumstances must be looked at to determine whether a financing is in the public good. CRR cites, Re Easton, 125 N.H. 205, 213, 480 A.2d 88 (1984), wherein the Court said:

... the PUC has a duty to determine whether, under all the circumstances,

the financing is in the public good — a determination which includes considerations beyond the terms of the proposed financing.

CRR maintains that so much has changed since the last review of "the public good" that a new inquiry is needed. The Commission cannot slip its inquiry to another borrowing even though that borrowing is anticipated.

CRR alleges the Company presently has a debt of $1.3 Billion and in 1986 paid almost 40% of its gross revenues to service this debt. With the prospect of over $600 Million in projected financing needed if the plant doesn't begin commercial operation before July 1, 1988 and with no commercial operation date in sight, the Commission has to now consider all the circumstances of any financing. If bankruptcy is the alternative, it should be explored now.

C. Consumer Advocate

The Consumer Advocate contends that the protection of the ratepayers is the basis for the requirement of an inquiry into the public interest prior to financing authorization, pursuant to RSA 369:1 and 4. "The primary concern of the Commission in ascertaining the public interest for purposes of capitalization is the protection of the consuming public." Re New Hampshire Gas & E. Co., 88 N.H. 50, 57, 16 PUR NS 322, 329, 184 Atl. 602 (1936). "(I)f it appears, upon all of

the evidence, that the capitalization sought is so high that the utility, because of (its) inability to earn operating costs, depreciation, and other charges, will not be able to give its consumers at reasonable rates the service to which they are entitled, then the primary public interest may be found to be affected injuriously." Id., 88 N.H. at 57, 16 PUR NS at 329; Re Seacoast Anti-Pollution League, 125 N.H. at 718. His position is the issues in this case are too important for the Commission to listen to the "inconsistent statements of PSNH" and defer to a later case the broad scope of review required by statute and Easton. It is clear to the Consumer Advocate that "the PUC has a role in determining whether a proposed financing is in the public good, and that role encompasses considerations beyond merely the terms of the proposed financing." Re Easton, supra, at 211.

The Consumer Advocate reminds the Commission that an Easton inquiry is required when there are reasonable grounds to believe that there has been a material change of facts from the time of prior determination. He judges that such changes have occurred. Since the Commission's decision in DF 84-200, there has been a total loss of the UNITIL load. Additionally, the Seabrook on-line date has slipped several times. Furthermore, the political delays resulting from the Commonwealth of Massachusetts' intervention in the matter of the Seabrook evacuation plans has set the stage for "monumental legal and constitutional battles between the states on one hand and the federal government and the utilities on the other hand." Decommissioning costs were not adequately addressed in DF 84200, nor was the issue of future capital additions to Seabrook sufficiently explored and added to the eventual total cost. Finally, small power production has increased to the point of eliminating the market that was being created for Seabrook.

The Consumer Advocate contends that the Commission must conduct an Easton inquiry prior to allowing PSNH to borrow any more money.

D. American Cogenics, Inc.

American Cogenics, Inc. (ACI) contends that ordinarily a proposed financing to support the type of construction expenditures itemized in this petition would be routine under normal circumstances of utility financing. However, these are not ordinary times. The question of necessity for these construction expenditures and the question of the effect of the proposed financing on the continued financial viability of PSNH are closely related. ACI contends that if the

necessity for the construction expenditures cannot be demonstrated then the financing should not be approved for that portion of the financing requested for the expenditures deemed not necessary. PSNH must be required to show that the issuance of $220 Million worth of additional debt does not materially impair the financial viability of PSNH.

ACI proposes that the question of whether to authorize the proposed financing or a portion of the proposed financing be addressed in two stages. The first stage would require a thorough analysis and review of the necessity of the proposed construction expenditures. The second stage would examine the effect of any financing for necessary expenditures on the continued viability of PSNH given the current capital structure and costs of PSNH, projected additional financing

(whether Seabrook-related or not), and the uncertainties concerning the commercial operation date of Unit I of Seabrook Station. This would constitute the Easton review.

Finally, a review of the rate implications of any financing which meets the conditions of the first two stages of review must be made.

In response to Commissioner Aeschliman's questions, it is the position of ACI that no financing of PSNH can be approved without an Easton review of the effects of a proposed financing on financial feasibility. Accordingly, ACI urges that the second stage of the proceeding make that analysis.

In response to Commissioner Aeschliman's second question, ACI believes that the PUC has the discretion to undertake a bifurcated procedure under circumstances where the continued existence of PSNH is immediately threatened should it not obtain prompt action on a proposed financing. ACI contends that those circumstances appear not to exist here.

Accordingly, ACI proposes that the first stage inquiry address the "necessity" for the construction expenditures. If, as a result of the first stage inquiry, critical need is established, the PUC can consider approving a limited financing for the critical items subject to a subsequent Easton review. ACI reminds the Commission, however, that at this junction in the proceeding no basis for a bifurcated Easton review has been claimed by PSNH, nor has one been established.

COMMISSION ANALYSIS

[1] The Commission has carefully reviewed all of the memoranda on scope filed by the parties. The Commission has also reviewed the applicable standards governing the scope of finance proceedings including, inter alia, RSA 369; Re Easton, 125 N.H. 205, 480 A.2d 88 (1984); Re Seacoast Anti-Pollution League, 125 N.H. 405 (1984); Re Seacoast Anti-Pollution League, 125 N.H. 708, 482 A.2d 1196 (1984); and Re Conservation Law Foundation of New England, Inc., 127 N.H. 606, 507 A.2d 652 (1986).

As a result of these deliberations, we have determined that the following broad issues are within the scope of this proceeding.

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

2. Whether the purpose of the proposed financing is in the public good, i.e., is it for the public good to permit PSNH to obtain financing for two years of nonSeabrook construction expenses? Is the object of the financing necessary? Is the proposed action forbidden by law?

3. Whether there are economic alternatives to this non-Seabrook construction that can provide the same level of services.

4. Whether it is economically feasible for PSNH to engage in the proposed financing including a determination of the level of revenues necessary to support the additions to the capital structure which results from successful completion of the proposed financing.

To determine the proper scope of this finance proceeding and the Commission's

responsibility in considering a utility's financing request, we have reviewed the standards set forth by the New Hampshire Supreme Court in Re Conservation Law Foundation of New England, Inc., 127 N.H. 606, 507 A.2d 652 (1986) and the cases cited therein. The Court summarizes the body of law on page 614, supra, as follows:

The scope of the commission's responsibility rests upon the mandate of RSA 369:1 and :4, which require the commission's approval for the issuance of a utility's securities and which condition the granting of that approval on a finding that the amount and objects of the proposed financing will be in the "public good," id., as being "reasonable, taking all interests into consideration." Grafton County Electric Light & P. Co. v. New Hampshire, 77 N.H. 539, 542, PUR1915C 1064, 1069, 94 Atl. 193, 195 (1915). Thus, in Re Easton, 125 N.H. at 205, 480 A.2d at 88, we followed long-standing law in holding that a financing in the public good must be one "[reasonable] to be permitted under all the circumstances of the case." Id. at 212, 480 A.2d at 91 (quoting Grafton, supra, 77 N.H. at 540, PUR1915C at 1067, 94 Atl. at 194). Accordingly, we emphasized that the express statutory concern for the public good comprises more than the terms and conditions of the financing itself and we held that the commission was obligated to determine whether the object of the financing was reasonably required for use in discharging a utility company's obligation, which is to provide safe and reliable service, id. at 211, 480 A.2d at 90. Moreover, we specifically decided that the commission was obliged to determine whether the company's plans to accomplish that object were economically justified when measured against any adequate alternatives; and whether the capitalization resulting from the utility company's plans would be supportable. Id. at 212-13, 480 A.2d at 91.

The Court on page 215 further:

defined the scope of the required inquiry. In Re Seacoast Anti-Pollution League, 125 N.H. at 465, 482 A.2d at 509, we referred to the issue of alternative sources of power by quoting with implicit approval from the commission's order, which opened this docket to consider "`the long term alternatives to completion of Seabrook Unit I in the context of the ... incremental cost [of completion] and the assumptions found by the commission to be reasonable. ...'" Id. at 473, 482 A.2d at 515. In the later, identically captioned, Re Seacoast Anti-Pollution League, 125 N.H. at 708, 484 A.2d at 1196, we referred to the issue of capitalization by emphasizing that the Easton hearing must apply the standard expressed in Re New Hampshire Gas & E. Co., 88 N.H. 50, 16 PUR NS 322, 184 Atl. 602 (1936), that "the primary public interest may be found to be affected injuriously" "if it appears, upon all the evidence, that the capitalization sought is so high that the utility, because of [its] inability to earn operating costs, depreciation, and other charges, will not be able to give its consumers at reasonable rates the service to which they are entitled. ..." Re Seacoast Anti-Pollution League, 125 N.H. at 718, 484 A.2d at 1203 (quoting Re New Hampshire Gas & E. Co., 88 N.H. at 57, 16 PUR NS at 329, 184 Atl. at 607).

A review of the memoranda submitted by the parties clearly indicates that they differ on the scope of the proceeding, and the Commission is again requested to define the scope in accordance with the authority set forth.

Our conclusions as to the proper scope rest on the following analysis: the proposed financing is to accomplish a construction budget for "routine improvements", i.e., improvements necessary to provide adequate service to customers regardless of the outcome of Seabrook. In Re Easton,

125 N.H. at 214, the Court recognized the

distinction between Re Public Service Co. of New Hampshire, 122 N.H. 1062, 51 PUR4th 298, 454 A.2d 435 (1982) which in that case involved a "routine financing request". The ruling implies that routine financing can have a narrow scope.

The Commission also notes that PSNH did bifurcate the original petition seeking $360 Million to the present petition seeking $220 Million. The $140,000,000 net financing is an attempt to confine the proceeding to a narrow review. PSNH has represented that a petition to address Seabrook expenses will be filed in April 1987. Under those circumstances, there is an adequate opportunity to have a broad review and to address all changed circumstances that may have occurred. The Commission acknowledges that where a financing concerns an objective which will take a long period of time to complete and require multiple financings, a broad Easton review of each of those financings to address changed circumstances is appropriate. Where "routine construction" is sought, a narrow review conducted within the scope we set forth above is appropriate and appropriate conditions may be imposed if the record reflects the necessity to do so.

To conduct simultaneous hearings, each having broad review as requested by the intervenors, is not the best use of administrative resources. One of the bases upon which the majority of the Commission approved the filing of the amended petition reducing the amount of the financing to $140 Million was that the time frame to conduct a narrow review could be accomplished. Our past experiences in Docket DF 84-200 and DF 83-360 compels us to find that those types of financings will take a year or more to complete. Routine construction projects should not be burdened by such administrative proceedings.

Our disposition of the scope of the proceedings, i.e., confined by the "purpose" of the financing, does not preclude the parties from litigating the necessity of the proposed financing or any alternatives thereto. However, we believe that the scope as defined by the Commission permits the joining of those issues in this proceeding.

The Commission is mindful of those who allege that the Company is not financially viable now and was not viable during 84-200. Our findings in 84-200 continue and the opportunity to review them on a complete record will be available in a Seabrook financing to be filed in April. Under those circumstances, we find that administrative efficiency is best served by defining now and for future proceedings that the scope of proceedings on routine construction projects be confined to the purpose of the financing and the effect of the financing while financings for major construction projects require a broader scope. Where multiple financings are required for the same project, changed circumstances shall be addressed.

[2] The dissent asserts that the issue of a possible PSNH bankruptcy should be included in the scope of this proceeding. This proposal is premature. Bankruptcy is not yet an appropriate issue in this non-Seabrook financing. Although we examined bankruptcy in depth in 84-200, we did not have to do so. 127 N.H. at 624, 625. It would be even less appropriate for us to burden these proceedings with the bankruptcy issue, in that the object of the financing is routine operation and maintenance of service, a purpose for which there is no purported alternative. In

DF 84-200 there were proposed alternatives to the completion of Seabrook which would have led to PSNH bankruptcy if adopted. There are at this point no such alternatives under consideration here. Bankruptcy is not itself an alternative to the maintenance and operation of the system, just as it was not considered by the Supreme Court to be an alternative means of generating power in DF 84-200. Id at 625.

Second, there has been no Commission finding that the financing could be supported only by full dollar recovery of the investment, with bankruptcy being the only alternative. Id. Under these circumstances, it is not necessary for us to re-examine the bankruptcy issue now.

Page 131

There is no need to relitigate the bankruptcy option on every financing, including routine financings for which there is no purported alternative asserted. Bankruptcy was examined in 84-200 and may well be examined again in the Seabrook financing expected to be filed later this month. The public interest would not be well served, in our opinion, by unnecessarily burdening these proceedings with issues not material to the case before us.

CONCLUSION

Upon consideration of the memoranda and arguments presented, the Commission finds that the proper scope for this proceeding is as follows:

1. Whether the terms, conditions and amount of the proposed financing are in the pub1ic good.

2. Whether the purpose of the proposed financing is in the public good, i.e., is it for the public good to permit PSNH to obtain financing for two years of nonSeabrook construction expenses? Is the object of the financing necessary? Is the proposed action forbidden by law?

3. Whether there are economic alternatives to this non-Seabrook construction that can provide the same level of services.

4. Whether it is economically feasible for PSNH to engage in the proposed financing including a determination of the level of revenues necessary to support the additions to the capital structure which results from successful completion of the proposed financing.

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 scope of the proceedings shall be as follows:

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

2. Whether the purpose of the proposed financing is in the public good, i.e., is it for the public good to permit PSNH to obtain financing for two years of nonSeabrook construction expenses? Is the object of the financing necessary? Is the proposed action forbidden by law?

3. Whether there are economic alternatives to this non-Seabrook construction that can provide the same level of services.

4. Whether it is economically feasible for PSNH to engage in the proposed financing including a determination of the level of revenues necessary to support the additions to the capital structure which results from successful completion of the proposed financing; and it is

FURTHER ORDERED, that a supplemental prehearing conference be fixed for April 17, 1987 at two o'clock in the after- noon for the purpose of fixing a procedural schedule in this matter.

By Order of the Public Utilities Commission of New Hampshire this third day of April, 1987.

DISSENTING OPINION OF COMMISSIONER AESCHLIMAN

Under the circumstances of the financial condition of Public Service Company of New Hampshire, no substantial borrowing which further encumbers the existing assets and franchise of the utility is routine regardless of the purpose of the capital expenditures. The searching role of the Commission envisioned by the Court in Easton and subsequent decisions is not fulfilled by the scope of review outlined by the majority.

The critical issue facing this Commission

Page 132

is no longer the financial feasibility of completing Seabrook; it is the financial viability of Public Service Company of New Hampshire. Under RSA 369 the Commission must determine whether the Company can support its capitalization with reasonable rates. Because circumstances affecting PSNH's ability to support its capitalization with reasonable rates have changed substantially since the decision in DF 84-200, the findings in that case can no longer be relied upon relative to the existing level of capitalization let alone additional capitalization.

Testimony by Company witnesses and Security and Exchange Commission (SEC) filings that have been incorporated into this case indicate that serious questions exist about

(1) the continuing financial viability of the Company;

(2) the ability of the Commission to meaningfully consider the interests of all ratepayers in future rate cases consistent with the Company's survival.

Given these circumstances the Commission must undertake a substantial review of the Company's continuing financial viability and the Commission's ability to consider ratepayers' interests in future rate cases before approving additional financing.

In addition, while ultimate findings on the continuing viability of the Company and the Commission's ability to protect ratepayer interests would be based upon all of the evidence presented in the case, the Commission has sufficient information initially to know that there is substantial doubt about these issues. Consequently, I believe the Commission must include within the scope of this proceeding a reconsideration of its findings relative to bankruptcy. If the Commission determines that bankruptcy is virtually certain or that bankruptcy is a preferred outcome, the approval of more debt, particularly debt that further encumbers the Company's assets and franchise, is not in the public interest.

The Legal Standard of Review

[i] The Court prescribed a searching role for the Commission in reviewing long term financing petitions pursuant to RSA 369. The Court indicated that in determining whether a proposed financing is in the public good, the Commission must consider more than the terms of the financing. The particular scope of an "Easton review" necessarily depends upon the specific facts and issues in each case. If the circumstances have not changed since a prior review, previous findings can obviously be relied upon. However, the limited review suggested by PSNH and adopted by the majority simply does not fulfill the searching role envisioned by the Court given the situation at hand.

Since the purpose of the proposed expenditures is for non-Seabrook capital additions, I agree that the scope of this proceeding need not include alternatives to the Seabrook project. But whether the capital expenditures are Seabrook related or not is immaterial to the question of whether the capitalization of the Company is jeopardized. The Commission has a duty to consider all of the circumstances, and this certainly includes the vastly changed circumstances affecting the financial condition of the Company from the time of the 1985 decision. The Court specifically indicated in Re Seacoast Anti-Pollution League,

On the one hand the PUC need not allow relitigation of such a determination when there is no reason to believe that there has been a material change of facts from the time of a prior determination. On the other hand, when there are reasonable grounds to believe that such facts have changed, the commission has a duty to reconsider prior determinations of the public interest that may have been rendered obsolete. 125 N.H. at 474.

The Company and the majority of the

Commission would limit the review of the question of whether the capitalization can be supported by reasonable rates to a consideration of the short term effects of this financing in isolation from the rest of the Company's capitalization and financial plans.[1(40)] Such a review is essentially meaningless. I believe the Court envisioned a review of the total capitalization that exists and will be required under reasonable planning assumptions in its requirement that the Commission determine

whether capitalization resulting from the utility company's plans would be supportable. 127 N.H. 106, 614 (1986).

Substantially Changed Circumstances

The Company's financial situation is obviously substantially affected by the changed circumstances surrounding the operation of Seabrook from the findings in the majority decision in DF 84-200. While the Company is using an in-service date of January 1, 1988 for financial planning, it is clear that no reliance can be placed on this date and that there is a substantial question whether the plant can be licensed.

In addition, there have been substantial market changes since the findings in DF 84-200 which have adversely affected the Company's ability to support its capitalization and recover its costs. Since the spring of 1985 interest rates have fallen four hundred basis points and oil and gas prices have experienced dramatic declines. As a result PSNH's customers have significantly

greater opportunities to bypass the PSNH system for some or all of their services. The announcement of Pathway 2000 by PSNH in July 1986 was a specific recognition of the need to reduce prospective prices in order to meet demand side competition.[2(41)]

The Extent These Changes Have Affected the Company's Financial Circumstances

The Commission has a significant amount of information available from the SEC filing and from the testimony of the Company witnesses in other cases before the Commission about the degree to which these changed circumstances have affected the Company. The Commission has a duty to be informed, RSA 374:4, and to take into consideration evidence initially available to it in determining the scope of this proceeding.

The information available to the Commission and noticed in this docket raises substantial questions about the continuing financial viability of the Company. The Company is currently experiencing a negative cash flow of about $150 million per year.[3(42)] Without Seabrook in operation the Company will be required to borrow to meet the $200 million annual interest payments on its outstanding indebtedness.[4(43)] In fact, the Company is using internally generated funds to pay some of its debt costs while requesting financing authority for non-Seabrook capital additions. In the event of a bankruptcy, the trustee could be expected to allow expenditure of funds for items necessary to provide service. What would not be paid is some of the $200 million annual interest payments. The Company has paid no preferred or common stock dividends since the winter of 1984 and is presently more than $100 million in arrears in the payment of preferred dividends.[5(44)]

If Seabrook does not operate until July 1988, the amount of financing which PSNH will require between 1987 and 1991 will approximate $656,000,000.[6(45)] If in addition the Company received non-Seabrook rate increases of 11% and 6% rather than 14% and 7%, the amount of external financing for the period would increase by an additional $160,000,000.[7(46)] A later in-service date would substantially increase these borrowing requirements. There is a substantial question whether the Company can raise these amounts.

The uncertainty about the continuing financial viability of the Company is explicitly stated in the SEC filing.

Page 134

Given the political and competitive circumstances confronting the Company, and the uncertainty as to the date of commencement of commercial operation of Seabrook Unit 1, there can be no assurance that the Company will be able to achieve and sustain a rate level sufficient to enable it to support its existing indebtedness or the further amounts of indebtedness which will be required or that the Company will be able to obtain external financing in such further amounts.[8(47)]

Even if the Commission makes optimistic assumptions about Seabrook licensing and about the success of external financings, the testimony of PSNH's witnesses indicates that Pathway 2000 is essentially a survival plan and that there is considerable uncertainty about the Company's load forecasts. Wyatt Brown, Manager — Energy Management in the System Planning/Energy Management Department, testified as follows:

Because of competition, neither customers can be assumed to be able to bear additional increases in rates above those currently projected, nor can PSNH investors be asked to bear additional costs beyond those proposed in Pathway 2000 without threatening the Company's survival.[9](48)

Mr. Brown further testified that the general theme of Pathway 2000 is to address the areas of key competition, specifically space heating, water heating and industrial customers.[10](49) Although the specific development of these programs is still being worked on and is in a preliminary stage, the Company's most recent load forecast assumes the impact of these programs in retaining load and reducing expected industrial cogeneration.[11](50) The load forecast is, thus, an end result number showing where the Company expects load levels to occur.

And, essentially subjectively my assumption is that that will result in rates and rate structures maintaining load levels at the load levels that are reflected in the 86-K load forecast.[12](51)

Essentially the Company is simply assuming that the historical elasticities will continue to be valid if preferential rates are given to the most elastic uses — space heating, water heating and industrial customers. Analysis that has been done for the Company to explicitly model the penetration of cogeneration shows that the erosion in demand that is not captured by historical elasticities is substantial, some 100 mw for manufacturing customers.[13](52) Mr. Brown recognizes that preferential rates will be essential to retain load.

I think it is obvious that with the rate increases that we are facing for our customers we are going to have to attempt these types of programs in order to maintain a reasonable load level for the future.[14](53)

The uncertainty of the feasibility of Pathway 2000 was underscored by the testimony of Bruce Ambrose, a consultant from the National Economic Research Associates, Inc. who has worked with PSNH in developing Pathway 2000.

... because I have dealt with Pathway 2000 and I said there is a lot of wishful thinking in there. That is my own set of words and I think when you are trying to keep rates as low as possible to ratepayers, what you might call known and certain might be a little more wishful thinking in there than what you are going to want to pay out the door to a QF, let's put it that way. ... I am just saying, you suffer in that you, and I don't mean that in a derogatory sense, I guess you don't know as much about Pathway 2000 as you (SIC) do and how it has been developed and what has been in it, since it hasn't been released, that is understandable.

But, I will tell you that they are swallowing a lot of dollars and a lot of considerations went into looking at the

Page 135

dollars, and the assumptions and everything else that was in there and I will just repeat what 1 said earlier, there would be a tendency for them to be very prayerful and wishful in the assumptions that go in there to make rates as low as possible to ratepayers.[15](54)

Standards for Determining that the Capitalization Can Be Supported by Reasonable Rates

[ii] First the Commission must determine that the rate levels are commercially viable. In my

opinion in DF 84-200 I was using reasonable in the sense of commercially viable to determine a rate ceiling that was feasible.

Beyond a determination of viability, the Commission should have the opportunity in future rate cases to set rates according to regulatory standards for determining just and reasonable rates. These standards require that the rate base of the Company should be determined by the prudent, used and useful investment of the Company. The rate of return allowed should comply with the judicial standard of a fair rate of return, which requires efficient and economic management and precludes returns appropriate to highly profitable or speculative ventures. Bluefield Water Works & Improv. Co. v. West Virginia Pub. Service Commission, 262 U.S. 679, 692, 693, PUR1923D 11, 67 L.Ed. 1176, 43 S.Ct. 675 (1923).

Similarly, rate structures should be determined on the basis of cost of service recognizing the principles of efficiency, equity and continuity. While these principles can encompass recognition of the economic concepts embodied in marginal cost pricing, the Commission must ask whether marginal cost pricing for competitive services with the residual revenue requirement distributed according to the inverse elasticity rule, i.e. the least elastic services receive the greatest increases, is equitable when there are very large differences between average revenue requirement and marginal cost. The Commission must also ask whether certain services and customers should receive preferential rates to meet competition from alternative fuels and self-generation. Or does the necessity for these rate structures indicate that the amount of revenue to be collected is unreasonable in the first place? Would their approval institutionalize what regulation was designed to prevent — the segmentation of markets and the shifting of costs to captive customers and services, particularly residential power and light customers and small business customers?

The Commission needs to ask now how it can determine that rates required to support PSNH's capitalization will be reasonable if both the rate level and rate structure are dictated by the Company's revenue needs rather than determined through a rate making process based on regulatory principles.

If it is confirmed upon further review that the Pathway 2000 plan is the best outcome ratepayers may expect and that the Commission will have virtually no discretion in setting rate levels and rate structure then I believe the Commission could only determine that the rates required to support PSNH's capitalization were reasonable if the rates were lower than those which would be likely to occur in bankruptcy.

Bankruptcy Issues Which Require Consideration

In order to compare Pathway 2000 rates with rates that may occur in bankruptcy, the Commission would need to update and expand the limited rate analysis that was included in DF 84-200. This would require that expert opinion be obtained relative to the cost of capital during a bankruptcy and following reorganization and relative to the market value of PSNH assets. With this information high and low rate scenarios could be constructed with the high scenario including a revaluation of existing assets in rate base to market value.

Bankruptcy is generally considered undesirable for a utility because the cost of debt for the reorganized Company may be higher than the present embedded cost of debt and because existing assets may be

revalued resulting in a higher rate base. In PSNH's present situation, the embedded cost of debt is more than 15% and the revaluation of present assets in rate base may be far outweighed by a valuation of the Seabrook assets at market value. Accordingly, it is far from clear that the conclusions relative to bankruptcy in DF 84-200 would continue to be valid.

In addition, the majority's conclusions in DF 84-200 relative to the need for power in a bankruptcy situation need to be reconsidered in light of present facts. Because the Seabrook plant is now constructed, the time when financing decisions of this Commission would be determinative relative to the completion of the plant is past. Even in the event of bankruptcy it is likely that a trustee would continue Seabrook support payments to protect the interests of investors. If this were not so, the other joint owners have too large a financial interest in a completed plant to abandon it unless it cannot be licensed. The facts relative to the availability of alternative sources of power is also substantially changed by the market situation today.

The financing decisions of this Commission are of critical importance to the question of future rate levels. The amount of outstanding debt and mortgages on the Company's property and franchise may also be of considerable importance in resolving a bankruptcy proceeding.

Timeframe for Completion of this Docket

The Company has submitted an affidavit and data indicating a need for financing authority to meet cash flow requirements by August 1987. The Commission should recognize that the Company has considerable short term control of its cash flow. Mr. Bayless indicated this flexibility in prior testimony when he indicated that with cash conservation the Company could stretch the cash flow into September and perhaps October, but a $37 million debt payment in October would be the limiting factor and would require external financing.[16(55)] I believe the Commission can still rely on this testimony as the best estimate of the time when the Company will require financing.

Consequently, I believe the appropriate review can be done in the time available. When there is an urgency consultant reports can be obtained expeditiously. This was demonstrated in the spring of 1984 when the N.E. Governor's Conference obtained an independent report on Seabrook cost and schedule in six weeks. Testimony and discovery could be completed in time for summer hearings and a timely conclusion to this case.

FOOTNOTES

[1]Company Counsel misinterpreted the meaning of financial feasibility in the questions I raised to mean financial feasibility in relation to PSNH's Seabrook investment. The statement specifically referred to the financial viability of the Company. In this context it should have been clear that financial feasibility referred to the ability of the Company to support its capitalization.

[2]Remarks by R. J. Harrison, News Conference July 18, 1986, DR 86-41, Exhibit 58, 5-6.

[3]Testimony of Charles Bayless, DR 86-122, 12 Tr. 27.

[4]Testimony of Charles Bayless, DR 86-122, 12 Tr. 26, 37-40. Securities and Exchange

Commission Form S-1, Registration No. 2-921202, December 9, 1986, 18.

[5]Securities and Exchange Commission Form S-1, Registration No. 2-921202, December 9, 1986, 60.

[6]Securities and Exchange Commission Form S-1, Registration No. 2-92102, December 9, 1986, 13.

[7]Id.

[8]Id., 5.

[9]Testimony of Wyatt Brown, DR 86-41, 5 Tr 26-27.

[10]Id. 9 Tr 31.

[11]Id. 6 Tr 106-107; 9 Tr 31.

[12]Id. 9 Tr 46-47.

[13]Testimony of Roger Naill, DR 86-41, Exh. 37, 37-38.

[14]Testimony of Wyatt Brown, DR 86-41, 9 Tr 136.

[15]Testimony of Bruce Ambrose, DR 86-41, 10 Tr 73-74.

[16]Testimony of Charles Bayless, DR 86-122, Tr 117-120.

==========

NH.PUC*04/06/87*[60202]*72 NH PUC 138*Manchester Water Works

[Go to End of 60202]

72 NH PUC 138

Re Manchester Water Works

DR 86-80
Order No. 18,628

New Hampshire Public Utilities Commission

April 6, 1987

ORDER allowing the levying of a special charge to finance the extension of service by a municipal water utility.

---

1. SERVICE, § 191 — Charges to additional customers — Municipal water utility — Source development charge — Extraterritorial service.

[N.H.] A municipal water utility was permitted to levy a source development charge (SDC) against additional customers to be served in areas outside its municipal limits for the purpose of financing new plant required for the extension of service to those additional customers; in

support of its decision the commission found that (1) the SDC did not violate a state statute prohibiting the inclusion of construction work in progress in rate base because the SDC was akin to a contribution in aid of construction and an availability charge, both of which have been allowed in the past, and (2) nonconventional ratemaking methods such as a SDC are appropriate for municipal utilities operating outside their city boundaries. p. 143.

2. SERVICE, § 191 — Charges to additional customers — "Source development charge" — Extensions — Municipal water utility — Reporting requirement.

[N.H.] While a municipal water utility may levy a "source development charge" (SDC) to finance the construction of new plant and the extension of service to new franchise areas, it must submit to the commission an annual report on the SDC and on the construction project. p. 143.

APPEARANCES: McLane, Graf, Raulerson & Middleton by Robert Wells, Esquire and Richard Samuels, Esquire on behalf of Manchester Water Works; Eugene Sullivan, Finance Director, 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

On April 2, 1986, Manchester Water Works filed a tariff revision to NHPUC]3 Water — Original Page 1 reflecting institution of a Merrimack River Source Development Charge (SDC) with an effective date of April 2, 1986; and a Motion to Waive Rule 1603.03(b) which requires that complete financial data accompany a filing. On April 17, 1986 Order No. 18,218 was issued suspending the filing pending investigation and a decision thereon. On April 23, 1986 an objection to Order No. 18,218 was filed by the company on grounds that the effective date of April 2, 1986 should be allowed based on extenuating circumstances.

On May 8, 1986 the company filed an affidavit of publication in the UNION LEADER on May 6, 1986 which gave notice of the filing of tariff pages with the Commission. On May 14, 1986 the Commission issued an Order of Notice setting a prehearing conference on June 24, 1986. An affidavit of publication for this conference was received on June 2, 1986.

On June 24, 1986 the procedural hearing was held and Report and Order 18,330 was subsequently issued setting forth a procedural schedule. In a letter dated November 3, 1986 the Commission granted staff's request for a change of hearing dates to November 14, December 15 and Decem- ber 19, 1986.

On November 7, 1986 MWW filed a memorandum of law which addressed three issues: (1) whether customer contributions in aid of construction are permitted under New Hampshire law, (2) whether the MSDC would constitute a discriminatory charge

and (3) whether the MSDC would be consistent with RSA 378:30-a. A supplementary

memorandum of law was filed on December 15, 1986.

Hearings were held on November 14, December 19 and December 29, 1986. Offering testimony for the company were Frederick Elwell, Director and Chief Engineer of Manchester Water Works, and Frederick J. Holland and Christopher P.N. Woodcock of the firm Camp, Dresser and McKee. Appearing in support of the petition were Justin S. Bielagus, of Cold Stream Associates; Mayor Paul P. Collette of Derry, N.H.; Mark Stebbins, a real estate developer; Eugene Thomas, Selectman in the town of Auburn, N.H.; Raymond E. Cote, a land developer; Elmer B. Nickerson, Selectman of the Town of Goffstown; John B. Sullivan, Jr., a real estate developer; Sidney Baines, Jr., Chairman of the Board of Selectmen, Hooksett, N.H.; Thomas A. Riley of Riley Enterprises, Real Estate Investors; Ralph Page, Water Commissioner for Central Hooksett Water Precinct; Mainindra Sharma of the Southern New Hampshire Planning Commission and Arthur W. Rose, Chairman of the Southern New Hampshire Planning Commission. Appearing in opposition to the petition was Daniel D. Lanning of the Commission staff.

On January 26, 1987 Manchester Water Works filed a Post-Hearing Memorandum describing their position relative to approval of the Merrimack Source Development Charge (SDC).

II. DESCRIPTION OF THE PROPOSED SOURCE DEVELOPMENT CHARGE

In September, 1985 the Manchester Water Works (MWW) Board of Water Commissioners received a report entitled "Comprehensive Water Resource Plan" prepared under contract to Camp, Dresser & McKee. This report described anticipated growth in water demand in areas expected to be served by MWW and available resources to meet these demands. A large part of the projected growth is expected to take place in areas not currently franchised to MWW. Furthermore, presently developed water resources of MWW are not adequate to meet these needs in the target year of 2005 or beyond.

The consultant's report estimates that in 2005 water consumption in presently franchised areas, including wholesale service agreements, will reach 17.8 million gallons per day (mgd). The report also described the potential of additional service requests for 12.75 mgd by customers in unfranchised areas. The expected safe yield of Lake Massabesic, MWW's current source of water, was estimated to be 22 mgd. Therefore, it is clearly necessary to consider new sources if all of these needs are to be met.

In view of projections that the City of Manchester and the existing franchise areas would approach the safe yield of Lake Massabesic in less than 20 years, the Manchester Board of Water Commissioners imposed a moratorium on franchise extensions on February 5, 1986. It is the position of the Board of Water Commissioners that if a new source of water supply is developed to serve the demands of new franchise areas, those new areas should bear the burden of paying for the system expansion. The proposed source development charge (SDC) was developed in response to this policy.

Several alternatives for development of a new source of water have been considered. Based on cost comparisons and discussions with the N.H. Water Supply and Pollution Control Division the selected alternative would draw water from the Merrimack River, pump it through a new pipeline to the upper Lake Massabesic watershed and discharge this water to supplement the

natural yield of the lake. The new facilities would provide approximately 13 mgd of additional capacity. The estimated cost of this plan is $15,571,172 based on a completion date in July, 1993.

In order to fund design, construction and financing of these facilities MWW has proposed the Merrimack Source Development Charge. The charge has also been described as a capital charge, availability fee or

Page 139

contribution in aid of construction. It is calculated to pay for the development of the new source but not operation or maintenance of the facilities or plant required to extend service to and within new franchise areas. Charges such as this are unique to New Hampshire but they have been recognized by the American Water Works Association and have been considered for application in other states.

The amount of the SDC is calculated by dividing the total estimated cost by the capacity in gallons per day. The fee would be applied directly to estimated use of large customers in newly franchised areas (meter size 312N and up) and to average use for customers served by smaller meter sizes as shown in the following table:

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

Meter Size (inches)	Average Use (gal/day)	Source Development Charge ($)
5/8	279.0	318
3/4	706.0	805
1	842.2	960
1-1/2	1989.5	2268
2	4076.1	4647
3 & up	Based on estimated usage.	

These charges would be paid at the time initial services were provided by MWW. They would apply only to customers in newly franchised areas or to new wholesale contracts. Prior to completion of the new facilities, water would be provided through excess capacity of the present system. The charges would accumulate in a segregated account to pay for design, construction and financing of the new source development.

III. POSITION OF THE PARTIES

A review of the record in this proceeding has identified several issues which must be considered in the ultimate decision. The positions taken on them are presented below. The major issues are:

1. Whether the SDC is a charge for construction work in progress within the meaning of RSA 378:30-a.

2. The obligations and expectations of Manchester Water Works relative to serving water needs of presently unfranchised areas.

3. Equity among customer classes including those located in the City of Manchester, the surrounding franchised areas, the unfranchised areas and the areas served under current or future wholesale contracts.

4. Adequacy of the available cost estimates for future construction as a basis for customer charges.

A. Construction Work in Progress

The position of Manchester Water Works is that the proposed Merrimack source development charge is just and reasonable and is not prohibited by law. Adoption of the policy would allow expansion of the Manchester Water Works system to neighboring towns which MWW would otherwise be unwilling to serve. This is in keeping with established Commission policy and the encouragement of orderly expansion of regional water systems. The SDC would allow implementation of this policy of expansion to serve areas outside the city of Manchester without unduly prejudicing the citizens of Manchester who would not, except for this expansion, need the additional source development.

Page 140

The Commission has authority under RSA 374:2, 378:7, and 378:8 which give the Commission comprehensive powers in setting just and reasonable rates with the burden of proof being placed on the public utility seeking the rate. The case at issue is not a rate case in that the statutes providing for temporary and permanent rates, RSA 378:27 and 28 respectively, are not at issue here. Rather, this case involves contributions in aid of construction and availability charges, which are well established in New Hampshire public utility law.

MWW takes the position that the SDC is not prohibited by the so-called anti-CWIP statute, RSA 378:30-a, in that 378:30-a applies only to rate cases and, as mentioned above, the SDC is not a "rate or charge" that is to be "included in a utility's rate base nor be allowed as an expense for rate making purposes.... ."[1(56)]

RSA 378:30-a applies only to the treatment of construction work in progress in setting rates under RSA 378:27 and 28, which are not at issue here. Also, the terms "rates or charges" are used in RSA 378:30-a only in their technical sense; Re Public Service Co. of New Hampshire, 125 N.H. 46, 52, 60 PUR4th 16, 480 A.2d 20 (1984); it does not apply to availability fees to new customers that are accounted for as contributions in aid of construction; See RSA 21:2 (technical words and phrases, and such others as may have acquired a particular and appropriate meaning in law, shall be construed and understood according to such peculiar and appropriate meaning").

The Commission, MWW asserts, has long treated contributions in aid of construction by new customers, such as charges for extension of service, as a reimbursement for capital expenditure. This contribution is different from a revenue item and is not considered to be a return on investment. Accordingly, RSA 378:30-a must be read, in light of this special meaning of its language in utility law, not to preclude the SDC.

In testimony of D. Lanning, Commission staff has taken the opposite position that the proposed SDC is a charge for construction work which is not completed and therefore is prohibited by RSA 378:30-a. A distinction was made between contributions in aid of construction for main extensions and service installations which will be constructed and placed in use immediately and the proposed source development which would not be placed in service for up to six years after payment of the SDC.

B. Service to Presently Unfranchised Areas.

The position of MWW relative to unfranchised areas is that a documented need exists for water service. Requests for extension of their service area made during the ten months following imposition of the moratorium represent approximately 1 mgd and a conditional wholesale contract for 2.1 mgd has been negotiated with Southern New Hampshire Water Company. Furthermore, the town of Derry, a present wholesale customer has also expressed interest in expanding its contract limits. The company produced twelve witnesses representing various developers, local governments and regional planning commissions, all of whom spoke in favor of the proposal. Most expressed satisfaction with the SDC as a reasonable cost for connection to the MWW system. The company also submitted a letter from Bernard Lucey, Chief of the Water Supply Division of the N.H. Water Supply and Pollution Control Commission which spoke in favor of expanding the MWW service area.

The company also presented testimony which demonstrated that other alternatives to MWW expansion would be more expensive for the ultimate customer and therefore should be discarded.

Through cross examination of the company witnesses, the Commissioners and Commission staff expressed concern regarding a related issue as described below.

MWW does not have franchises for the new areas and has made no petition to secure these franchises. Before assigning the new franchises, the Commission must consider all aspects of such a petition including alternatives such as service by other

Page 141

water companies. The current petition asks approval for charges to fund expenditures for a source which will only be needed if MWW does obtain the franchises.

C. Equity among Customers.

The company takes the position that the SDC is based on the concept of equity. Customers in areas presently served by MWW have an ample present and future supply and should not be called upon to pay for expansion into other areas. Furthermore, the SDC results in a lower cost to serve new customers than would occur if a total new system were developed.

Company witnesses also described the rationale behind use of capital recovery fees to recover growth related costs from those causing the need for new facilities. Two methods for calculating such fees developed by the American Water Works Association were described. While not used to develop the SDC for other reasons, it was shown that either method would result in higher costs to the new customer. The company indicated that if the SDC were found to produce more funds than required to develop the proposed facilities, refunds would be made.

The company further stated that New Hampshire statutes "prohibit only undue and unreasonable preferences, or discrimination without a basis"[2(57)] and they "shall not require absolute uniformity"[3(58)] . Only customers in newly franchised areas will create a need for new facilities. Thus, the distinction between new and existing franchise areas does not constitute an unreasonable or undue preference.

With respect to future wholesale water customers, the company witness suggested that

imposing this charge on increased volumes only, would be an equitable way of handling these customers.

A number of witnesses representing future water users agreed with the equity of the SDC. For example, Mr. J. Bielagus of Coldstream Associates, a Bedford real estate developer, explained that the SDC would result in a more economical and reliable supply of water than the alternative of well supplies.

The Commission staff has taken the position that the proposed SDC is discriminatory because it would be a charge which would not be applied to all ratepayers. Furthermore, if the new customers pay a rate equal to that of old customers, inequity results because they have contributed to plant additions which are used by all customers. If the cost of the new facilities were applied to all customers using traditional ratemaking methodology, the additional revenue requirement would be only 6.4% for project completion in 1990 or 7.4% if completed in 1992.

Through cross-examination by staff of company witnesses, the record shows that the method for handling extensions of existing wholesale contracts has not been finalized. It is not certain that current contracts would be renewed without payment of the SDC for all required volumes. Furthermore, even if only applied to new demand, it is not clear whether old demand is determined from actual use or the previous contract limit.

D. Use of Cost Estimates for Ratemaking.

Testimony of MWW has based the SDC entirely on preliminary cost estimates for a project which would be completed in 1993. It is proposed that new customers be charged on this basis immediately upon MWW providing service. The rate at which new customers would be added to the system is based on simplified assumptions about uniform growth.

Commission staff has testified in opposition to this use of estimated costs for several reasons. First, the estimates were compared to the cost of a similar project recently completed by Pennichuck Water Co. While no definitive alternative estimate was prepared, the accuracy of the cost basis for the SDC is questionable. It is possible that Commission acceptance of the proposed charges might preclude a later

Page 142

post-construction review of the prudency of the expenditures or an audit of the appropriateness of including all costs within the SDC.

A second concern relates to the practical difficulties of using estimated costs for current charges. Should the project never materialize or cost differ from the estimate, refunds could be required. The difficulties of locating contributors or properly allocating cost underruns six or more years after the charge is assessed could be even more difficult. The MWW petition has not addressed the issue of reconciling funds collected to the actual cost of facilities.

IV. COMMISSION ANALYSIS

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. This differs significantly from commonly applied ratemaking principals in New Hampshire.

Without addressing the general applicability of this rationale we can address the question of a municipal utility whose primary obligation is to serve the City of Manchester. While service has been provided to many outlying areas in the past, major capital additions have not been required. Under conventional ratemaking methodologies the incentive for major investment in new facilities has been the anticipation of a return on the expanded rate base. For a municipal utility operating in a "non-profit" mode, this incentive for expansion is absent. It is only when the municipal utility choses to operate outside its corporate limits that considerations of return on investment and obligations to serve non-residents arise. The risk to taxpayers of the city, due to a program of capital expenditure, is not offset by either improved service or the hope of economic gain. Therefore, we look upon this situation as unique and requiring special consideration.

A further matter of importance is whether a need exists for the proposed system expansion. Clearly there are potential customers in the towns adjacent to MWW's existing franchise who have need of water. As described by Mr. Lucey the N. H. Water Supply and Pollution Control Commission has made "efforts to facilitate the availability of regional water systems as well as to limit the proliferation of small developertype water systems."[4](59) The Commission shares in this objective. The petitioner has also made convincing arguments that alternative approaches would not be cost effective. Therefore, we believe a sufficient case has been made for the proposed system expansion. It is notable that no member of the public or representative of a competing water company appeared in opposition to the petition.

[1] With regard to the issue of law as to applicability of RSA 378:30-a, the so called anti-CWIP statute, we believe the argument that in the past the Commission has allowed both contributions in aid of construction and availability charges is persuasive. However, the potentially long or even unlimited time from payment of the SDC to operation of the facilities gives us concern. Once again the uniqueness of MWW as a municipal utility helps to allay this concern because their continued existence and availability to meet their obligations to provide water is not questioned. Furthermore, with a municipal utility serving outside its city boundaries, nonconventional ratemaking methodologies are frequently necessary. For example, a return on investment is allowed on plant serving customers outside Manchester but rates within the city are established through cost recovery mechanisms. For these reasons we accept the position that RSA 378:30-a does not preclude MWW's proposed SDC.

[2] We are now left with the specific details of how the SDC is calculated, how it will be applied and the continued oversight of this Commission in assuring new customers that a fair and equitable charge is made. In spite of the conceptual acceptability of this SDC under the conditions described above we are unwilling to give final approval to the proposed amount of the SDC.

Page 143

First, we will require that Manchester present to the Commission an expansion plan which will describe the development of water service to those areas which will be subject to the source development charge. Second, we will require an annual review of the source development charge to include the following:

1. An updated estimate of costs and the timing of expenditures.

2. A review of project financing and status of the SDC fund.

3. An analysis of system expansion over the past year and an updated forecast of future expansion.

For this purpose, MWW will report in writing to the Commission each year until completion of the project and final reconciliation of the customer charges with actual costs. After review and approval of the annual SDC report by the Commission, MWW will adjust the SDC accordingly. If at any time the newly calculated SDC differs from the proposed amounts described above or the then applicable amount by more than 10%, adjustments will be determined and refunds sent to each new customer. A plan for contacting customers and resolution of who is the appropriate recipient of any refunds should be submitted with the first year's report for approval. The first report is due one year from the date hereof.

Finally, we take note of the testimony and cross-examination regarding the possible impact that the SDC may have on the Derry wholesale contract. It is clear that there will be no impact upon the terms of the contract as it presently exists. However, the Commission is not prepared to make a finding as to whether it will, or should, apply to any future renegotiations of that contract. The parties are advised that that will be an issue which the Commission will examine closely in a future proceeding.

Our order will issue accordingly.

ORDER

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

ORDERED, that the Manchester Water Works tariff, NHPUC]3 Water — Second Revised Page 31, be and hereby is rejected with respect to the effective date; and it is

FURTHER ORDERED, that the service development as described in Second Revised Page 31 be, and hereby is, approved; and it is

FURTHER ORDERED, that determination of the amount of the charge and implementation of the charge will be contingent upon the Company's providing this Commission with a plan which will describe the development of water service to those areas which will be the subject of the SDS; and it is

FURTHER ORDERED, that an annual review of the service development charge will be made by this Commission and will include the following:

1. An updated estimate of costs and the timing of expenditures;

2. A review of project financing and status of the SDC fund;

3. An analysis of system expansion over the past year and an updated forecast of future expansion;

and it is

FURTHER ORDERED, that such annual review will result in such adjustments as the Commission finds appropriate; and it is

FURTHER ORDERED, that Manchester Water Works file revised tariff pages bearing an

effective date of May 1, 1987; and it is

FURTHER ORDERED, that prior to billing the Source Development Charge, Manchester Water Works receive approval for extension of its franchise territory from this Commission to include the subject customer's property.

Page 144

By order of the Public Utilities Commission of New Hampshire this sixth day of April, 1987.

FOOTNOTES

[1]MWW Post-Hearing Memorandum dated January 26, 1987 at 17, citing RSA 378:30-a.

[2]MWW Post-Hearing Memorandum dated January 26, 1987 at 22 citing RSA 378:10.

[3]RSA 378:11

[4]Letter dated November 19, 1986 from Bernard D. Lucey, Chief, Water Supply Division, WSPCC to Public Utilities Commission (Exhibit 17).

==========

NH.PUC*04/07/87*[60203]*72 NH PUC 145*Northeast Cogeneration Systems, Inc.

[Go to End of 60203]

72 NH PUC 145

Re Northeast Cogeneration Systems, Inc.

DR 86-135
Second Supplemental Order No. 18,629
New Hampshire Public Utilities Commission
April 7, 1987

ORDER dismissing a petition for a long-term rate order for a small power production project.

COGENERATION, § 18 — Petition for longterm rate order — Grounds for dismissal — Lack of prosecution.

[N.H.] A petition for a long-term rate order for a small power production project was dismissed for lack of prosecution where the project developer reported that it was no longer interested in pursuing a long term contract with the interconnecting utility.

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, Docket No. DE 83-62 Report and Supplemental Order No. 17,104 (July 5, 1984) (69 NH PUC 35), 61 PUR4th 132) and Docket No. DR 85-215 Report and Order No. 17,838 (September 5, 1986) (70 NH PUC 753, 69 PUR4th 365); 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 producers 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 1, 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, on June 23, 1986 by Supplemental Order No. 18,314, the procedural schedule relating to the filing of testimony was waived; and

WHEREAS, by letter dated July 2, 1986 the hearing was continued at the request of the parties to allow time for Northeast and PSNH to negotiate the long term rate; and

WHEREAS, by letter dated March 5, 1987 Staff requested Northeast to file status on the negotiations; and

WHEREAS, on March 25, 1987 Counsel for Northeast reported that petitioner was

no longer interested in pursuing a long term contract with PSNH; it is therefore

ORDERED, that the long term rate filing of Northeast Cogeneration Systems, Inc. be and hereby is, dismissed without prejudice for lack of prosecution; and it is

FURTHER ORDERED, that Docket No. DR 86-135 be, and hereby is, closed.

By Order of the Public Utilities Commission of New Hampshire this seventh day of April, 1987.

==========

NH.PUC*04/07/87*[60204]*72 NH PUC 146*George Loupis

[Go to End of 60204]

72 NH PUC 146

Re George Loupis

DE 87-49
Order No. 18,630
New Hampshire Public Utilities Commission
April 7, 1987

ORDER authorizing the installation and operation of a customer-owned, coin-operated telephone.

SERVICE, § 456 — Telephone — Customerowned, coin-operated telephones — Conditions on the provision of service.

[N.H.] A request for authority to install and operate a customer-owned, coin-operated telephone (COCOT) was granted where (1) the telephone instrument had been approved by the Federal Communications Commission, (2) the COCOT would be operated in accordance with interim guidelines established by the state commission, (3) the COCOT would be installed on a measured business line only, and (4) the rates for local calls would be the same as the rate charged by the local exchange telephone carrier.

By the COMMISSION:

ORDER

WHEREAS, on March 25, 1987, George Loupis, DBA George's Super Value, Main Street, P.O. Box 483, Enfield, New Hampshire, filed with this Commission a request for authorization for the installation of a COCOT at the cited address, and

WHEREAS, Mr. Loupis indicates such telephone instrument bears FCC approval under registration No. E2E506-71118-CX-T, and

WHEREAS, operation of such COCOT will be according to interim guidelines specified in Commission Order No. 17,486 (70 NH PUC 89); and

WHEREAS, the Commission finds such in the public interest; it is

ORDERED, that George Loupis be, and hereby is, authorized to install, maintain and operate one COCOT instrument at George's Super Value, Main Street in Enfield, New Hampshire; and it is

FURTHER ORDERED, that such telephone be installed only on a measured business line per Part A Section 8.4 of the New England Telephone & Telegraph Company's approved Tariff No. 75; and it is

FURTHER ORDERED, that rates for local calls via this COCOT be priced the same as

current New England Telephone coin rates.

By order of the Public Utilities Commission of New Hampshire this seventh day of April, 1987.

==========

[Go to End of 60205]

72 NH PUC 147

Re Merrimack County Telephone Company

DR 87-41
Order No. 18,631

New Hampshire Public Utilities Commission

April 9, 1987

ORDER authorizing a rate decrease for the custom calling services of a local exchange telephone carrier.

RATES, § 553 — Telephone — Custom calling services — Rate decrease — Factors affecting authorization.

[N.H.] In authorizing a rate decrease for the custom calling services of a local exchange telephone carrier, the commission found that the decreased rate would (1) be sufficient to cover the cost of custom calling services and provide a contribution to the costs of basic telephone service, and (2) be competitive with similar customer premises equipment offerings.

By the COMMISSION:

ORDER

WHEREAS, on February 27, 1987, Merrimack County Telephone Company filed tariff revisions effective April 1, 1987 proposing to decrease the monthly rates for Call Waiting, Call Forwarding, Three-Way Calling, and Speed Calling and to introduce several new services: Toll Restriction, Data Line Security, Direct Access Line, and Assistance Line Service; and

WHEREAS, such revisions were suspended pending investigation by Order No. 18,605 issued March 18, 1987; and

WHEREAS, a rate decrease for custom calling services is warranted since the installation of more efficient equipment has caused costs of service to decrease; and

WHEREAS, the evidence submitted shows that the rates proposed are just and reasonable since they cover the costs of service, will contribute their share of the costs of basic telephone

service, and they are competitive with similar customer premises equipment offerings; and

WHEREAS, these services are valuable residential services and, therefore, are in the public interest; it is hereby

ORDERED, that:

Part III-General, Section 3, Custom Calling Services
First Revised Page 1, Canceling Original
First Revised Page 2, Canceling Original
First Revised Page 3, Canceling Original
Original Page 4
Original Page 5

of Merrimack's Tariff N.H.P.U.C. No. 7-Telephone, be, and hereby are, approved for effect April 1, 1987; and it is

FURTHER ORDERED, that Merrimack will file a tracking report on May 1, 1988 showing the penetration rate and amount for the so-called "new services"; and it is

FURTHER ORDERED, that Merrimack will file compliance tariff pages which are duplicates of their original filing.

By Order of the Public Utilities Commission of New Hampshire this ninth day of April, 1987.

==========

NH.PUC*04/13/87*[60206]*72 NH PUC 147*Granite State Telephone, Inc.

[Go to End of 60206]

72 NH PUC 147

Re Granite State Telephone, Inc.

DE 86-226
Order No. 18,635

New Hampshire Public Utilities Commission

April 13, 1987

ORDER granting conditional approval to the expansion of extended area telephone service.

Page 147

SERVICE, § 445 — Telephone — Extended area service — Settlement agreement — Polling requirements.

[N.H.] In accordance with the terms of a settlement agreement, Granite State Telephone, Inc.

(GST), was directed to poll its subscribers in the Chester exchange regarding their desire to add two-way extended area telephone service (EAS) to Manchester, subject to an additional cost of 68 cents per month; if the result of the poll is positive (50% or more acceptance), New England Telephone and Telegraph Company would provide EAS from Manchester to Chester without the application of the EAS surcharge or polling of the Manchester customer base, however, if the results of the poll are negative, GST must poll the Chester subscribers regarding one-way EAS to Manchester at a cost of 35 cents per month.

By the COMMISSION:

ORDER

WHEREAS, on February 28, 1986, this Commission opened its Docket DE 86-82 to investigate a petition seeking to expand the Extended Area Service (EAS) of Granite State Telephone, Inc. (GST) in its Chester Exchange; and

WHEREAS, such investigation included directing GST to study toll calling originating in Chester and terminating in exchanges being sought for addition to the EAS; and

WHEREAS, such study was to be patterned after guidelines adopted by this Commission subsequent to the New England Telephone Docket DR 82-70; and

WHEREAS, GST disputed the application of guidelines used for New England Telephone, and on August 1, 1986, petitioned separately for two-way EAS; and

WHEREAS, this Commission opened docket DE 86-226 in response to the GST petition, incorporating the earlier docket DE 86-82; and

WHEREAS, NET subsequently filed an objection to the consideration of two-way EAS as proposed by GST since it impacted that Company's customers and revenues; and

WHEREAS, GST and NET have met and resolved the issues of this specific expansion of the Chester EAS and have briefed both staff and the Selectmen of the Town of Chester; and

WHEREAS, on April 1, 1987, a joint GST/NET agreement was filed which outlined a settlement of this case; and

WHEREAS, Commission Staff filed a motion suggesting acceptance by the Commission of said agreement; and

WHEREAS, the Commission finds such terms of cited settlement agreement in the public good; it is

ORDERED, that Granite State Telephone, Inc. poll its subscribers in the Chester Exchange regarding their desires to add twoway EAS to Manchester, subject to additional cost of 68 per month; and it is

FURTHER ORDERED, that, if the result of the poll is positive (50% or more acceptance), NET will provide EAS from Manchester to Chester as requested in the petition without the application of the EAS surcharge or polling of the Manchester customer base; however, if the result of the poll is negative (less than 50% acceptance), Granite State Telephone shall poll the

Chester subscribers regarding one-way EAS to Manchester at a cost of 35 per month; and it is

FURTHER ORDERED, that NET will provide EAS from Manchester to Chester at no additional cost should the two-way polling cited above be positive; and it is

FURTHER ORDERED, that future requests for EAS expansion by GST and NET follow guidelines adopted earlier.

By order of the Public Utilities Commission of New Hampshire this thirteenth day of April, 1987.

==========

NH.PUC*04/13/87*[60207]*72 NH PUC 149*Gas Service, Inc.

[Go to End of 60207]

72 NH PUC 149

Re Gas Service, Inc.

Additional party: Concord Natural Gas Corporation

DE 86-268
Second Supplemental Order No. 18,637

New Hampshire Public Utilities Commission

April 13, 1987

ORDER requiring natural gas distribution utilities to improve pipeline safety procedures.

GAS, § 5.1 — Safety considerations — Construction and maintenance procedures — Inspection — Supervision.

[N.H.] In response to three incidents that disrupted natural gas service, including an explosion that resulted in substantial property damage, the commission directed natural gas distribution utilities to (1) investigate construction and maintenance procedures and identify those practices that need to be specifically inspected, (2) submit proposed inspection methods to the commission for review prior to including the methods in operating and maintenance plans, and (3) review personnel supervisory capabilities and take steps to assure supervision is adequate.

By the COMMISSION:

REPORT

This docket was opened at the request of Commission Staff upon notification of a gas related incident which occurred at 152 Indian Rock Road, Merrimack, New Hampshire involving natural gas leaking from an underground pipe. Ignition and a resulting explosion caused

substantial property damage.

This docket was expanded when, on September 27, 1986 a gas related incident occurred on the system of Concord Natural Gas Corporation whereby an overpressuring of the gas distribution system was the apparent cause of a customer's ruptured meter and when on October 6, 1986 a gas related incident occurred on the Gas Service, Inc. system in Nashua, New Hampshire whereby an improper testing procedure was the apparent cause of a gas outage to approximately 37 customers.

In consideration of the September 29, 1986 incident the Commission issued its Order No. 18,423 on October 2, 1986 (71 NH PUC 575) which directed Gas Service, Inc. to immediately complete a gas leakage survey of the entire project where the incident occurred, required that Gas Service immediately examine by x-ray inspection on a random sample other similar fittings located at that project, and directed Gas Service and the other subsidiaries of Energy North, Inc. to immediately retrain and instruct its personnel involved in the installation of mains and services as to the proper procedures required to assure a safe distribution system. It directed that Gas Service notify the Commission's Gas Safety Engineer of their findings, corrective measures and steps to be taken to train personnel.

In consideration of the September 27, 1986 and October 6, 1986 incidents the Commission issued its Supplemental Order No. 18,442 on October 14, 1986 setting a hearing at the Commission's Concord offices on Wednesday, October 22, 1986 at which management of Gas Service, Inc. and the Concord Natural Gas Corporation were called to report their findings and recommendations. That hearing was subsequently rescheduled to October 31, 1986. A second day of hearing was held on November 12, 1986.

The Commission's Gas Safety Engineer, Richard G. Marini testified that he had investigated the three incidents referred to in Order No. 18,442.

Mr. Marini's investigation of the Concord regulator's station incident revealed that on the date of the incident Company personnel were retiring an old gas pressure regulator station and replacing it with a new station. In doing so the low pressure gas

system was "stopped off" in order to remove all the connections for the old station. During that process the Company inadvertently deactivated the pressure sensing line into the new regulator station. This created a false signal to the new regulator which caused it to "open" and increase the downstream system pressure above its normal operating pressure. Mr. Marini's investigation concluded that the personnel responsible for the job site work had not been properly trained in regulator station installation and were not qualified to perform the work.

Mr. Marini's investigation of the Indian Rock Road incident revealed that during the installation of the service line to the residential home at 152 Indian Rock Road, a plastic transition fitting was improperly installed to the meter riser, which caused significant gas leakage to occur into the building. Additionally, when the installation was complete a test of the system was attempted by using system gas pressure rather than air pressure and since an internal excess flow valve at the service failed to allow sufficient pressure build-up to locate a leak at the improperly installed transition fitting, the leak was not discovered. Mr. Marini determined that

the failure was caused by improper supervision of the installation crews.

Mr. Marini's investigation of the October 6th incident in Nashua revealed that air had been inadvertently injected into the distribution system during the testing of a new service installation at lot 591, Spindlewick Street, Nashua, New Hampshire. The service line was tapped into the active gas main prior to the time that the air test was made; therefore, when the air test was performed the air infiltrated into the main and caused approximately 37 customers to lose service. The service installation was performed by an outside contractor. Mr. Marini attributes a lack of personnel supervision to the cause of the problem.

Mr. Donald S. Inglis, President of the three utility companies, Gas Service, Inc., Manchester Gas Company, and Concord Natural Gas Corporation testified to the procedures used by the Company in supervising the activities of Company crews and contractor personnel. He expressed pride in the completion of a comprehensive emergency plan and procedures for all the Companies and for the completion of a standard operating and maintenance plan for all the Companies. A distribution systems manual has been developed, and a standard construction contract is used annually for the selection of outside contractors.

Mr. Inglis explained that the Company has developed three different training programs. One program for the utilization or service department encompasses all of the servicing requirements from interior piping to testing of piping, appliance repairs and meter sets and removals. A similar plan has been developed for the distribution department which includes the installation and maintenance of Bell and Spigot cast iron joints, mechanical fittings, regulators and the maintenance of regulators and regulator pits. It also includes standards for new construction of steel and plastic mains and services.

Personnel career advancement is tied at least to some degree to participation in various training programs, the plans for which are included in union contracts.

Mr. Inglis explained that the Company also has a comprehensive safety and safety inspection program which includes familiarization with all OSHA regulations and requirements, hazardous materials, first aid and CPR training courses. The Company works closely with various fire departments in their franchise area in matters pertaining to natural gas and propane incidents. In Nashua the Company assisted the local fire department in developing an actual outdoor fire fighting school to practice gas fire fighting techniques.

Mr. Ron Nichols, Vice President of Operations for the three utilities under Energy North, explained the Companies position relative to the three incidents. The Company did not deny responsibility for the three incidents. He testified that in response to the Commission's Order, the Company has increased the training program for contractors. Presently, crews are given refresher

courses on an annual basis. The Company is now considering sessions every other month. Each session will involve an eight hour program and will be geared toward the foreman and supervisor level. Company personnel will be exposed to the same training program as are the contractors except that in-house personnel will also receive training on regulations.

Commission Analysis

As a result of the three incidents Energy North has been cited for noncompliance with the following gas pipeline safety regulations:

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

192.13(c) General O&M Procedures
192.273(c) General Inspection
192.285(b) Plastic Pipe Qualifying Persons
to Make Joints
192.287 Plastic Pipe Inspection of Joints
192.513 Plastic Pipe Test Requirements for
Plastic Pipe
```

The Company responded to the citations by letter of October 28, 1986, and the letter was made an exhibit in this docket. The Company indicated that upon its own investigation they had determined that employee errors by the contractor were the causes of the incidents at 152 Indian Rock Road and at Spindlewick Street. The contractor's personnel have been given the Company's construction standards as well as training and instruction on the installation and testing of mains and services and additionally the contractor is conducting its own training sessions on those subjects. The Company advised that it was increasing its training and inspection efforts on a continuous basis.

Upon hearing the evidence we are satisfied that the Company has taken reasonable steps toward improving its system operations, at least to the extent that it has increased its emphasis on the training of company and contractor personnel. We are also satisfied that the Company has fulfilled the requirements of our Order No. 18,423 in that they have conducted the gas leakage survey in the vicinity of 152 Indian Rock Road, they have conducted a random x-ray inspection of similar fittings in the project and that they have trained and instructed their personnel involved in the installation of mains and services.

We are not persuaded, however, that the Company has taken adequate steps to increase its supervisory efforts over its field personnel. Testimony in this proceeding leads us to conclude that the Company is relying heavily upon the capabilities of crew members themselves to execute tests and record construction projects with little or no supervisory assistance. Whether that lack of supervisory assistance stems from an inadequate supervisory work force, or whether the existing supervisory work force is simply overcommitted to additional duties is not clear, but it is clear that added supervisory emphasis is warranted.

Staff testified that his investigation of other gas company operations reveals that some companies employ an inspector for every crew and that there are, additionally, supervisors over these inspectors.

The determination as to the number of personnel necessary to operate a company is clearly a management responsibility. The Commission has long held that it will not impose upon itself a role of management responsibility. We will, therefore, not judge to what extent, if any, the Company's supervisory efforts should be increased.

We will instead address the issue of what should be inspected, rather than who should be doing the inspection. We find that the Company has not clearly established which of its many construction operations require

specific supervision and inspection. We find there is a need for such identification. We find that critical areas of inspection should be specifically identified and should be included in the Company's operating and maintenance plan.

Accordingly, we will direct that the Company investigate its construction procedures and identify those practices that shall be specifically inspected. The identification of those practices and the methods by which they shall be inspected will be reviewed by the Commission prior to inclusion in the Company's operating and maintenance plans.

As always, Staff is available to assist the Company in reaching this goal. We will expect the practices to be included in their plan by July 1, 1987.

The EnergyNorth Companies have continuously demonstrated a deep commitment to operational safety. We will accept nothing less than the Company's continued commitment to operational safety. We expect the Company to review their personnel supervisory capabilities and to take such steps as are necessary to assure itself that adequate supervision to its construction and operations program is maintained.

Our Order will issue accordingly.

SUPPLEMENTAL ORDER

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

ORDERED, that the Companies investigate their construction procedures and identify those practices which shall be specifically inspected; and it is

FURTHER ORDERED, that subsequent to Commission review, those practices shall be included in the Companies operating and maintenance plan; and it is

FURTHER ORDERED, that such practices are to be included in the operating and maintenance plan by July 1, 1987.

By order of the Public Utilities Commission of New Hampshire this thirteenth day of April, 1987.

==========

NH.PUC*04/16/87*[60209]*72 NH PUC 152*Pennichuck Water Works Company

[Go to End of 60209]

72 NH PUC 152

Re Pennichuck Water Works Company

DR 86-127
Order No. 18,641

New Hampshire Public Utilities Commission

April 16, 1987

ORDER rejecting, without prejudice, proposed revisions to a water utility tariff.

PROCEDURE, § 10 — Dismissal without decision on the merits — Filing delays — Water tariff revisions.

[N.H.] Proposed revisions to a water utility tariff were rejected without prejudice based on a finding that a delay in the filing of the revised tariff pages had left the commission with insufficient time to resolve outstanding issues prior to the effective period of the original filing.

By the COMMISSION:

ORDER

WHEREAS, on March 20, 1986, Pennichuck Water Works (Company) filed certain revised pages to NHPUC No. 4 for Commission approval; and

WHEREAS, by Order No. 18,226 dated April 18, 1986 the Commission suspended the proposed tariff revisions to allow for investigation;

WHEREAS, on November 24, 1986, prior to a scheduled hearing on the proposed changes, the Company and Staff in lieu of a hearing engaged in a conference to narrow the issues presented by Staff; and

WHEREAS, the Company agreed to most of the Staff's positions and arguments; and

WHEREAS, the Company agreed to file revised tariff pages reflecting the modifications agreed to at the conference; and

WHEREAS, the Company did not submit revised tariff pages until March 27, 1987 which in Staff's opinion did not

reflect the changes agreed to at the November 24, 1986 conference. As a result of this delay, there is insufficient time for the parties to resolve the outstanding issues prior to the twelve month effective period of the original filing; it is hereby

ORDERED, that the following proposed revisions to NHPUC tariff No. 4, Water:

1st Revised Page 4-A
4th Revised Page 17
3rd Revised Page 18 thru 20
1st Revised Pages 20-A, 20-B, 20-C;
and
1st Revised Page 1
2nd Revised Page 4
2nd Revised Page 4-A
5th Revised Page 17

4th Revised Page 18
4th Revised Page 19
4th Revised Page 20

be and hereby are rejected without prejudice and the matters before the Commission in Docket DR 86-127 be and hereby are closed.

By order of the Public Utilities Commission of New Hampshire this sixteenth day of April, 1987.

==========

NH.PUC*04/17/87*[60210]*72 NH PUC 153*Public Service Company of New Hampshire

[Go to End of 60210]

72 NH PUC 153

Re Public Service Company of New Hampshire

DR 86-122
12th Supplemental Order No. 18,642

New Hampshire Public Utilities Commission

April 17, 1987

ORDER denying, in part, motions for reconsideration of an order authorizing an electric utility to increase rates prior to the completion of its rate case.

---

1. RATES, § 655 — Procedure — Rates pending investigation — Recordkeeping requirements — Electric utility.

[N.H.] The commission denied a motion for reconsideration of a decision that had allowed an electric utility to increase rates prior to the completion of its rate case and had required the utility to take measures to assure that full repayment would be made should the decision result in overcollections; nevertheless, in response to concerns raised by the motion, the utility was required to maintain billing records related to all customers on line from the date of the increase until any money ultimately required to be refunded has been returned to ratepayers or, until such records are no longer necessary. p. 154.

2. RATES, § 655 — Procedure — Rates pending investigation — Refunding mechanisms — Electric utility.

[N.H.] The commission denied a motion for reconsideration of the refunding requirements of an order granting an electric utility a rate increase pending final resolution of a rate case; it was found that consideration of the specific refund mechanism should be deferred and be considered along with the final resolution of the rate case. p. 154.

3. RATES, § 655 — Procedure — Rates pending investigation — Bond to guarantee refund — Electric utility.

[N.H.] The commission denied a motion for reconsideration of the adequateness of a bond that an electric utility was required to post to assure repayment of any overcollection that might be received under an order allowing the utility to increase its rates pending final resolution of its rate case; it was found that the bond had been accepted by the majority of the commission and no new evidence had been presented in support of the motion for reconsideration. p. 154.

4. PROCEDURE, § 1 — Resolution of procedural disputes — Informal procedures.

[N.H.] The commission encourages parties to resolve procedural disputes via informal means and will generally look with disfavor on motions from parties who do not utilize the procedures to resolve matters informally and instead merely file motions with the commission. p. 155.

Page 153

5. RATES, § 640 — Procedure and practice — Motion to preclude prefiled testimony — Rate design — Electric utility.

[N.H.] In denying a motion to defer consideration of the reconciliation methodology used by an electric utility in preparing its prefiled testimony on the design of its rates, the commission found that administrative economy, the alleged imperfections of the methodologies used in the testimony, the alleged adequacy of other evidence, and the lack of sufficient time to review the methodology did not provide grounds upon which to preclude the testimony; nevertheless, the commission found that the above grounds may be appropriate in considering the weight to be afforded such testimony and agreed to hold hearing on the matter should the parties fail to resolve the issue through voluntary consultation. p. 156.

By the COMMISSION:

REPORT REGARDING MOTIONS BY INTERVENORS AND CONSUMER ADVOCATE

This Report and the attached Order addresses the Consumer Advocate's MOTION TO COMPEL DISCOVERY filed February 20, 1987; the Campaign for Rate- payers Rights (CRR) MOTION FOR RECONSIDERATION OF FOURTH SUPPLEMENTAL ORDER NO. 18,523 (71 NH PUC 829) filed February 23, 1987; the Consumer Advocate's MOTION FOR PROCEDURAL ORDER filed February 27, 1987; and the Business and Industry Association of New Hampshire (BIA) MOTION TO DEFER CONSIDERATION OF THE NERA RECONCILIATION METHODOLOGY TO ANOTHER PROCEEDING filed April 1, 1987. PSNH filed responses to the Consumer Advocate Motion to Compel Discovery and the CRR Motion on March 3, 1987. On March 5, 1987 PSNH amended its response to the Consumer Advocate Motion to Compel Discovery. On April 7, 1987 PSNH filed a response to the BIA Motion. On April 13, 1987 the Commission General Counsel filed a letter advising the Commission that the issues raised by the Consumer Advocate Motion to Compel Discovery have been resolved.

Based upon the letter of the General Counsel advising the Commission the Consumer Advocate's opinion that the discovery problems raised by his Motion to Compel Discovery have been resolved, the Commission finds the issues therein moot and therefore denies that Motion.

The Commission commends the parties for working out their discovery problems amicably. Nevertheless, when necessary, the Commission will not hesitate to order the parties to appropriately respond to reasonable and lawful discovery requests. In the discussion below, the Report and Order discusses the remaining Motions, denies the outstanding Consumer Advocate Motion, denies the CRR Motion, and defers consideration of the BIA Motion until April 15, 1987.

I. The Campaign for Ratepayers Rights Motion for Reconsideration

[1-3] The Campaign for Ratepayers Rights in its Motion for Reconsideration requests that the Commission reconsider its decision authorizing collection of PSNH's requested 14% rate increase starting January 1, 1987 and take various measures to assure that full repayment of any overcollections pursuant to those rates are made. CRR specifically requests that the Commission order PSNH to secure a surety bond, identify all ratepayers paying the 14% increase, identify all ratepayers who will not or may not be ratepayers at the time of the final adjudication of the rate increase, provide a method for making cash refunds to all ratepayers (including a public broadcast notification system), and provide for interest on any refunds of an overcollection at a rate that is not less than PSNH's borrowing costs. In the PSNH response to the CRR Motion, PSNH urges denial of the CRR Motion and specifically argues that the bond posted by PSNH which has been accepted by the majority of the Commission should continue to be accepted.

Page 154

Both the CRR Motion and the PSNH response refer to a financial projection prepared by PSNH dated 1/13/87 that is not in the record before the Commission in this case. References to this type of factual material outside the record before the Commission is clearly inappropriate. No parties should engage in such conduct. The Commission will disregard the references to those financial scenarios.

The Commission has already ruled on the bond it required pursuant to Section 378:6 prior to allowing PSNH to exercise its statutory right to place its entire requested rate increase into effect. At that time as well as now, the Commission was aware of evidence before the Commission indicating that PSNH's evidence and position will probably support a smaller increase than the increase originally requested. The issues and facts have not changed significantly since the Commission decision on this matter. Thus, the Commission will not reconsider the type of bond it requires.

With regard to the other CRR requests, the Commission is unaware of any potential problem in identifying ratepayers now paying the 14% increase or identifying ratepayers who leave the system from January 1, 1987 through July 1, 1987. In case there is potential for the Company destroying records necessary for such identification, the Commission finds it reasonable to require PSNH to maintain billing records related to all customers on line from January 1, 1987 until all moneys are refunded or until such records are clearly no longer necessary for the refund mechanism chosen. Such records shall include records of any subsequent addresses at which customers reside at after leaving the PSNH system.

The remainder of the CRR requests deal with the specifics of dealing with a refund. The majority of the Commission chose not to deal with those matters in its Order No. 18,523. In

contrast, the dissent did desire to deal with certain aspects of the refund at that time. Considering that decision, it is now the unanimous view of the Commission that issues regarding the specific mechanisms of the refund should be deferred to be considered along with the final resolution of the rate case. For that reason only, all other requests in this CRR Motion for Reconsideration are denied except for those specifically granted above. The Commission would encourage the CRR to present arguments or evidence (through prefiled testimony filed as early as possible) on the specific issue of the refund. Any CRR testimony addressing an appropriate mechanism for the PSNH refund should be filed on or before May 1, 1987 so that it may be considered along with the other rate design matters before the Commission.

II. Consumer Advocate Motion for Procedural Order

[4] The Consumer Advocate, in its Motion for Procedural Order, requests that the Commission set additional filing dates for testimony filed by PSNH. In that Motion, he requests particular procedural steps by the Commission. The Commission notes that it already issued Ninth Supplemental Order No. 18,592 on March 12, 1987. In that Order, the Commission relied upon the Report filed by the General Counsel of prehearing conference held on March 4, 1987. From that Report, it is apparent that the Consumer Advocate did not attend that prehearing conference.

The Commission finds it inappropriate that the Consumer Advocate or any other party would not attend the conference which could, via informal means, resolve procedural disputes and then at the same time Motion the Commission to deal with such procedural matters. The Commission understands that some parties may not have interest in certain matters addressed at a prehearing conference. The Commission directs its Staff to organize the agendas for such conferences to allow parties with limited interests to dispose of their matters expeditiously without having to sit through other portions of the conference. The Commission assumes that its Staff has been doing this, and only desires to make this expectation explicit.

Page 155

The Commission shall generally look with disfavor upon motions from parties who do not utilize the established procedures to resolve matters informally and instead merely file motions with the Commission. Since the Consumer Advocate provides no explanation for its failure to pursue its procedural desires at the March 4, 1987 prehearing conference, the Commission denies his Motion.

III. BIA Motion to Defer Consideration

[5] The BIA requests that the Commission defer consideration of the NERA reconciliation methodology based upon arguments that the methodology is irrelevant because it is tied to the Seabrook project, is totally new, and has other shortcomings. BIA further alleges a lack of sufficient time to review it and the existence of an adequate evidentiary basis in this case for making allocations of revenues. PSNH, in its response, indicated that if the Commission does not wish to consider PSNH's alternative in this proceeding for reasons of administrative economy, PSNH will accept that course. PSNH further indicated that it does not agree with the grounds set forth in the BIA's Motion and took issue with every argument in the BIA Motion.

The Commission issued a Report and Order on February 9, 1987 in response to a motion from the Consumer Advocate to bring forth additional testimony and positions which may have evolved in this proceeding. Unfortunately, parties may have interpreted that Order to open the door to an entirely new rate design case. While the Commission hereby recognizes the lack of clarity in its February 9, 1987 Report and Order, it was not the Commission's intent to open up rate design issues in such a manner.

The Commission did, however, intend to get a clear idea of what the parties were doing and, furthermore, to provide opportunities and filing dates for supplemental testimony, in addition to rebuttal testimony. Supplemental testimony must clearly support one's original filing and not develop new material. Rebuttal testimony must clearly address that which is filed by other parties and should not provide new methodologies or positions except to the extent they are clearly responsive to another parties filing. To force parties to in essence start over again would pose an impermissibly large expense and burden and result in timeframes for discovery during which parties may not be able to respond.

The Commission finds that administrative economy, the alleged imperfections of methodologies in the testimony, the alleged adequacy of other evidence, and the lack of sufficient time do not provide grounds upon which to preclude PSNH from presenting testimony relevant to setting just and reasonable rates. Some or all of those grounds may be appropriate in considering the weight to be afforded such testimony. The Commission is not in a position at this time to rule on relevancy and on whether the March 3, 1987 testimony is proper supple- mental testimony. The Commission recommends that parties be prepared at the April 23, 1987 hearing to make recommendations regarding specific pieces of prefiled testimony in light of the above guidance. The Commission urges parties to voluntarily consult on this matter. If necessary, the Commission will hear arguments on this matter on April 23, 1987. Any arguments should address particular pieces of testimony and/or portions thereof. Thus, the Commission hereby defers action on the BIA's Motion until April 23, 1987.

Our Order will issue accordingly.

SUPPLEMENTAL ORDER

Based upon the foregoing Report Regarding Motions by Intervenors and Consumer Advocate, which is incorporated herein by reference; it is

ORDERED, that the Campaign for Ratepayers Rights Motion for Reconsideration of Fourth Supplemental Order No. 18,523 filed February 23, 1987 (71 NH PUC 829) is denied; and it is

FURTHER ORDERED, that the Consumer Advocate's Motion for Procedural Order filed February 27, 1987 is denied; and it is

FURTHER ORDERED, that the Business and Industry Association Motion to Defer Consideration of the NERA Reconciliation Methodology to Another Proceeding filed April 1, 1987 is deferred; and it is

FURTHER ORDERED, that the Consumer Advocate Motion to Compel Discovery filed

February 20, 1987 is denied based upon mootness; and it is

FURTHER ORDERED, that Public Service Company of New Hampshire shall maintain records of customers and former customers as described in the foregoing Report.

By order of the Public Utilities Commission of New Hampshire this seventeenth day of April, 1987.

Separate Opinion of Commissioner Lea H. Aeschliman

Concurring in Part and Dissenting in Part

I concur with the majority decision on the Consumer Advocate's motions and the BIA's motions, and dissent with their decision on the CRR motion. I would grant the CRR motion on the grounds stated in my separate opinion dated December 23, 1986.

==========

NH.PUC*04/20/87*[60211]*72 NH PUC 157*New England Telephone and Telegraph Company

[Go to End of 60211]

72 NH PUC 157

Re New England Telephone and Telegraph Company

DE 86-310
Order No. 18,646

New Hampshire Public Utilities Commission

April 20, 1987

ORDER nisi authorizing a local exchange telephone carrier to implement a universal wide area telephone service access line tariff as a temporary rate.

RATES, § 593.1 — Telephone — Wide area telephone service — Intrastate service — Temporary rates.

[N.H.] Where the Federal Communications Commission had required a local exchange telephone carrier, which had not yet received state commission-approval for its universal wide area telephone service (WATS) tariff, to provide universal WATS access lines to subscribers, thereby resulting in subscribers receiving the intrastate portion of the WATS service at no charge, the state commission authorized the carrier to implement a universal WATS access line tariff as a temporary rate pending the results of an investigation of the reasonableness of the tariff; in approving the temporary rate, the commission found that it would not be in the best interest of ratepayers to allow the WATS subscribers to receive a valuable service free of charge.

By the COMMISSION:

ORDER

WHEREAS, In Re Midyear 1986 Access Tariff Findings, Memorandum Opinion and Order (May 20, 1986) the Federal Communications Commission (FCC) required carriers to remove by June 1, 1986 all direct and indirect restrictions on the use of special access lines and on WATS closed ends (including blocking and screening services and restrictions on directionality)

unless such features or functions are desired by customers; and

WHEREAS, in an Order dated December 19, 1986 the FCC denied motions for reconsideration of the May 20th Order and required all tariffs to be modified accordingly within 15 days of the Order unless there were state restrictions on the use of WALs which were clearly stated in the local exchange carrier's interstate tariff and were adequately justified in materials filed to support the tariff; and

WHEREAS, on January 12, 1987 the FCC granted the local exchange carriers an extension until January 20, 1987 to file tariff revisions; and

WHEREAS, the above-mentioned FCC orders were effective in cases which were interstate tariff cases, instead of rulemakings and this Commission was not directly notified that its interest would be affected by these FCC proceedings and, therefore, did not receive due process of law; and

WHEREAS, the FCC required that NET include services in its tariffs which are intrastate in nature and, thereby, hold these services out to the public before such intrastate services were approved by this state Commission; and

WHEREAS, the Federal Communications Commission does not have jurisdiction with respect to charges, classifications, practices, services, facilities or regulations for or in connection with intrastate communications service, Communications Act of 1934, §§1, 2(b), as amended, 47 U.S.C.A. §§151, 152(b); and

WHEREAS, the 90 customers who have subscribed to this service since the effective date of the FCC tariff have only been charged by the other common carrier for the interstate portion of the service, while these customers have not been charged for the intrastate portion of the service because NET does not have a P.U.C. approved Universal WAL tariff; and

WHEREAS, on December 16, 1986, New England Telephone and Telegraph Company, (NET) filed Part A, Section 10, 3rd Revised Page 1 of its Tariff No. 75, proposing to implement a "Universal" WATS Access Line (WAL) tariff for effect January 15, 1987 to enable NET to assess intraLATA OUTWATS usage charges for the use of NET facilities used to complete a jurisdictionally intraLATA call placed by an end user employing a jurisdictionally interstate WATS Access Line (WAL) under NET Tariff FCC No. 40; and

WHEREAS, such tariff was suspended pending investigation by Order No. 18,529 on January 7, 1987 in this docket; and

WHEREAS, a prehearing conference was scheduled for June 18, 1987 before the Commission at its Concord office by Order No. 18,614, issued on March 25, 1987 (72 NH PUC

101), to determine the scope and procedural schedule of the Universal WATS access line tariff investigation; and

WHEREAS, the counsel for NET has requested that the prehearing conference be rescheduled since he will be unavailable from June 17 through July 3, 1987; and

WHEREAS, it is not in the best interest of the ratepayer to allow business customers to receive a valuable service free of charge; and

WHEREAS, the rates requested in the proposed Universal WAL tariff are the same usage charges as those charged under the Company's effective intraLATA OUTWATS tariff; and

WHEREAS, the Commission finds that the ratepayer should be afforded an opportunity to file comments and/or request an opportunity to be heard on the proposed WAL tariff; and

WHEREAS, NET was required, by an FCC Order dated January 1, 1987, to provide WATS Access Line Extensions (WALEs) at no charge (to connect a customer to an office where WAL service was technically feasible) where WATS is not technically feasible in the customer's serving office; and

WHEREAS, investment in equipment to provide such WALEs service would cost $1,000 to $1,400 per office in intrastate investment; it is hereby

ORDERED, NISI, that Part A, Section 10, 3rd revised Page 1 of the NET Tariff No. 75 be, and hereby is approved for

Page 158

effect as a temporary rate 30 days from the date of this Order; and it is

FURTHER ORDERED, that the NET shall determine the amount of lost revenues associated with the intrastate service which the Company was required to provide by the above-mentioned FCC orders before the effective date of an intrastate tariff and apply this loss to the inter-exchange portion of the business; and it is

FURTHER ORDERED, that no future provision of intrastate services and/or investment to enable such services, unless preempted by valid Federal action, will be allowed without the permission of this Commission; 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 NET provides service, said publication to be made no later than ten (10) days after the date of this Order and filed with the Commission within seven (7) days after said publication; and it is

FURTHER ORDERED, that NET shall notify all New Hampshire customers presently taking service under its FCC WAL and WALE service tariffs by causing an attested copy of this order to be mailed by certified mail, return receipt requested to the customers' last known business address; 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; and it is

FURTHER ORDERED, that the prehearing conference scheduled for June 18, 1987 will be rescheduled for August 12, 1987 at 10:00 A.M. and be held to determine the procedural schedule of the investigation and the scope of the investigation, which will include, among other things, the issue of whether the intraLATA OUTWATS rates in effect are still just and reasonable and nondiscriminatory.

By Order of the Public Utilities Commission of New Hampshire this twentieth day of April, 1987.

==========

NH.PUC*04/30/87*[60212]*72 NH PUC 159*New England Power Company

[Go to End of 60212]

72 NH PUC 159

Re New England Power Company

DF 86-106
Order No. 18,651

New Hampshire Public Utilities Commission

April 30, 1987

ORDER authorizing an electric utility to issue and sell general and refunding mortgage bonds to support pollution control revenue bonds.

SECURITY ISSUES, § 111 — Financing methods — Variable rate bonds — Electric utility.

[N.H.] An electric utility was authorized to issue and sell variable rate general and refunding mortgage bonds for the purpose of supporting pollution control revenue bonds; the commission found that variable rate bonds would result in initial savings to the utility and that, given the recent stability of interest rates, variable rate financing was an attractive option.

By the COMMISSION:

ORDER

WHEREAS, by Order No. 18,262, dated May 20, 1986, (71 NH PUC 296), in this proceeding the Commission authorized New England Power Company (the Company) to issue and sell one or more series of General and Refunding Mortgage Bonds

in the principal amount not exceeding $550,000,000 and to issue and pledge one or more additional series of First Mortgage Bonds in an aggregate principal amount not exceeding the aggregate principal amount of General and Refunding Mortgage Bonds authorized, and

WHEREAS, the Commission further authorized the execution by the Company of one or more loan agreements or supplemental loan agreements, in an aggregate principle amount not exceeding $170,000,000, with public agencies empowered to issue pollution control revenue bonds, and

WHEREAS, General and Refunding Mortgage Bonds issued and sold in connection with the pollution control revenue bonds were 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 by an agency of the Commonwealth of Massachusetts or the City of Salem, Massachusetts; the interest rate not to exceed 7.5% per year, and

WHEREAS, since the date of said order the Company has issued $120,000,000 of General and Refunding Mortgage Bonds. No loan agreements have been signed or General and Refunding Mortgage Bonds issued to support pollution control revenue bonds and no Preferred Stock has been issued pursuant to said order, and

WHEREAS, the Company has now an opportunity to use not exceeding $35,000,000 of General and Refunding Mortgage Bonds to finance the purchase and construction of pollution control equipment and solid waste disposal facilities at the Seabrook Nuclear Station. These bonds would be sold with such interest rate and such price as to conform with the interest rate and price of pollution control revenue bonds to be issued simultaneously therewith by the Industrial Development Authority of the State of New Hampshire, and

WHEREAS, the Company has been advised that significant interest savings can be realized by the issue of bonds with shorter horizons. The Company now seeks authority to provide a variable interest rate for additional General and Refunding Mortgage Bonds to support pollution control revenue bonds. The maximum interest rate would be 14%. The variable rates could be reset as often as every year or only once every several years. At the time of each reset, bondholders would have the right to "put" the bonds to the issuing authority at their face value plus accrued interest. A remarketing agent, retained by the issuing authority would examine the market yields of comparable tax exempt securities, and set the new rate at the lowest level that would in its judgement, having due regard for prevailing market conditions and the terms and conditions of the bonds, produce as nearly as practicable a par bid for the "put" bonds. The issuer would also retain the option, at the request of the company and upon each date the rate is reset, to fix the interest rate for the remaining term of the bond. If such an option were exercised, the bondholder would have a final right to "put" the bonds, and

WHEREAS, after investigation this Commission finds that a variable rate bond on which the rate was reset annually would carry an initial rate of 4 1/2%. The initial savings combined with recent stability of interest rates makes variable rate financing attractive at this time; it is

ORDERED, that New England Power Company, Inc., be, and hereby is, authorized to issue

and sell not exceeding $35,000,000 or General and Refunding Mortgage Bonds at a variable interest to support pollution control revenue bonds. The maximum interest rate will be 14% per annum. It is understood that the variable rate bond would carry an initial rate of 4 1/2% and could be reset as often as every year or only once every several years. The Company will retain the right to reset the rate at each reset date to fix the interest for the remaining term of the bonds. If such an option were exercised, bondholders would have a final right to "put" the bonds; and it is

FURTHER ORDERED, that the proceeds will be held inone or more special accounts and applied solely to either (i) the

Page 160

acquisition (through either open market purchases or the operation of redemption provision, 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 Company's treasury for expenditures incurred after April 1, 1986, for the foregoing purposes; and it is

FURTHER ORDERED, that on or before January 1st and July 1st, New England Power Company, Inc. shall file with this Commission a detailed statement, duly sworn to by its Treasurer or Assistant Treasurer, showing the disposition of the proceeds of 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 thirtieth day of April, 1987.

==========

NH.PUC*05/01/87*[60213]*72 NH PUC 161*Pike Industries, Inc.

[Go to End of 60213]

72 NH PUC 161

Re Pike Industries, Inc.

DE 87-77
Order No. 18,655

New Hampshire Public Utilities Commission

May 1, 1987

ORDER nisi authorizing the installation, maintenance and operation of a sewer pipe beneath state-owned railroad property.

CERTIFICATES, § 88 — Grant or refusal — Factors considered — Public need — State-owned

land.

[N.H.] A company was authorized to operate and maintain a sewer pipe beneath state-owned railroad property for the purpose of replacing an existing private sewage disposal system; the existing private sewage disposal system had been determined to be inadequate and it appeared that the replacement of the inadequate facilities was in the best interest of both the company and the general public.

By the COMMISSION:

ORDER

WHEREAS, on April 22, 1987, Pike Industries, Inc. filed with this Commission its petition seeking license for the crossing of State-owned railroad property in Tilton, New Hampshire; and

WHEREAS, such crossing comprises a sewer force main to be connected to the 6012N sewer interceptor line situated along the railroad right-of-way; and

WHEREAS, said force main shall replace the existing private sewage disposal system on the Pike property which has been determined inadequate; and

WHEREAS, the replacement of such inadequate facilities appears in the best interest of Pike Industries, Inc. and the general public; and

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

ORDERED, that all persons interested in responding to this petition be notified that they may submit written comments, or file a written request for hearing on the matter before this Commission, no later than May 20, 1987; and it is

FURTHER ORDERED, the Pike Industries, Inc. effect said notification by publication of this order once in the Evening Citizen, such publication to be no later than May 6, 1987 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 Pike Industries, Inc. be authorized pursuant to RSA 371:17 et seq to place, operate and maintain a sewer force main beneath the State-owned railroad property in Tilton, New Hampshire, as depicted in Pike Industries

drawings on file with this Commission; and it is

FURTHER ORDERED, that all construction meet the requirements of the Bureau of Railroads, Department of Transportation as well as those of the Division of Water Supply and Pollution Control, Department of Environmental Services; and it is

FURTHER ORDERED, that such authority shall be effective 20 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 first day of May, 1987.

72 NH PUC 162

Re Public Service Company of New Hampshire

DF 87-83
Order No. 18,661

New Hampshire Public Utilities Commission

May 6, 1987

ORDER denying a petition for an investigation of an electric utility's proposed short term financing.

---

1. SECURITY ISSUES, § 129 — Procedure — Short term financing — Need for investigatory proceeding — Electric utility.

[N.H.] A petition for the establishment of an investigatory proceeding for the purpose of examining an electric utility's proposal to raise $150 million in short term debt was denied as unnecessary because (1) the proposed borrowing was within the short term borrowing level approved by prior order, and (2) the scope of the existing proceeding established to examine the proposed borrowing was sufficient to enable the commission to conclude whether the borrowing should be authorized. p. 163.

2. SECURITY ISSUES, § 129 — Procedure — Short term financing — Need for the establishment of rules — Electric utility.

[N.H.] The commission has statutory authority to grant standing short term borrowing authority to individual utilities by specific order; accordingly, a motion for the development of rules pursuant to state statute RSA 541-A relative to issuance of debt was denied as unnecessary for the resolution of issues arising from an electric utility's proposal to raise $150 million in short term debt. p. 163.

3. SECURITY ISSUES, § 129 — Procedure — Short term financing — Analysis of borrowing proposals — Statutory requirements.

[N.H.] State statute RSA 369:7 specifically provides two alternative methods by which a utility's short term borrowing may be analyzed; the commission may either establish, by rules, the amount of borrowings which a company can make without specific investigation of a particular borrowing, or it may, upon specific investigation of a particular borrowing, issue an order setting forth the borrowing limits which the record in that docketed investigation justifies. p. 164.

---

i. SECURITY ISSUES, § 49 — Factors affecting authorization — Short term financing — Changes in financial condition — Electric utility.

[N.H.] Statement, in dissenting opinion, that the majority erred in denying a petition for an investigation of the short term borrowing of an electric utility; the dissenting commissioner argued that further investigation was required because substantial changes had occurred in the financial situation of the utility since the commission granted the short-term debt authorizations that the utility proposed to exercise. p. 164.

By the COMMISSION:

REPORT

The Consumer Advocate requests that the

Page 162

Commission investigate PSNH's intention to raise 150 million dollars in short term debt pursuant to RSA 369, 374, & 378. For the reasons set forth herein, the Commission denies that request.

[1] The Consumer Advocate sets forth that the current authority of PSNH to borrow $190 million dollars in short term debt is no longer valid because the Commission has not set established rules. He further argues that in the event the authority of PSNH to borrow 190 million short term is valid, that changed circumstances require an Easton type hearing.

The Commission has reviewed the petition of the Consumer Advocate and does not find that an Easton type review is appropriate on every allegation of changed circumstances on all financings filed by utilities. Short term financing is a well accepted practice of utilities to meet their ongoing obligations to provide service to customers between rate cases and the issuance of long term securities.

The purpose of regulating a utility's financings is to prevent the problem of over capitalization. See Phillip, "The Regulation of Public Utilities" second printing, 1985, page 213. The capitalization of a utility refers to the amount of outstanding securities — long term, short term, preferred and common stock. In DR 87-4, Order No. 18,626 (72 NH PUC 124, 129) we concluded that the scope of the proceeding would include, inter alia:

4. Whether it is economically feasible for PSNH to engage in the proposed financing including a determination of the level of revenues necessary to support the additions to the capital structure which results from successful completion of the proposed financing.

Within item 4 and the foregoing language the complete existing capital structure will be examined and all debt existing or about to exist will be considered in determining the level of revenue necessary to support the proposed financing.

PSNH requested in "an individual case" a short term borrowing level of approximately $220 million in DF 84-168. That borrowing level was authorized by the Commission by Order No. 17,139, 69 NH PUC 415 (1984). That authority is still valid. It is not necessary to open a new

docket to examine the effect of that borrowing since an examination of the long term debt outstanding and the short term debt outstanding, including the contemplated short term borrowing and the effect that said debts have on the total capital structure of PSNH, is within the scope of the proceeding in DR 87-4 Order No. 18,626 item 3 and 4.

Upon conclusion of all of the evidence in DR 87-4 the Commission will be able to conclude whether PSNH should be authorized to borrow the 145 million dollars requested in addition to the exercise of the authority granted for short term borrowing or in lieu of short term borrowing. Appropriate conditions may be attached to any financing order which may be in the public interest.

[2] In a separate motion, the Consumer Advocate requests that the Commission develop rules pursuant to RSA 541-A relative to the issuance of debt. The Commission finds such rules non-essential to the resolution of the instant petition, and unnecessary with respect to the manner in which the Commission generally addresses borrowing issues.

Under its statutory authorization, for many years both before and after the 1981 amendment, the Commission has granted standing short-term borrowing authority to individual utilities by specific orders. For examples of such orders issued prior to the 1981 amendment, see Re Merrimack County Teleph. Co., 61 NH PUC 198 (1976); Re New England Power Co., 64 NH PUC 33 (1979); and Re Gas Service, Inc., 64 NH PUC 432 (1979). For examples of standing short-term borrowing orders issued to individual utilities after the 1981 amendment, see Re Hudson Water Co., 67 NH PUC 106 (1982); Re Northern Utilities, Inc., 68 NH PUC 1 (1983); and Re Concord Nat. Gas Corp., 68 NH PUC 738 (1983). The Commission has clearly

understood its authority to issue standing short-term borrowing orders under RSA 369:7 to individual utilities.

The Commission's long-standing practice in applying the statutory phrase "specific order of the Commission in an individual case" in no way conflicts with the statutory language and is an appropriate application of the statutory language.

The Commission will apply that practice in the instant case. Accordingly, since application of any rules is unnecessary in addressing the instant petition, the Commission denies the Consumer Advocate's motion to establish appropriate rules pursuant to RSA 541:A.

[3] The Consumer Advocate further requests that the question of "... what entails on (sic) individual case" be transferred to the Supreme Court. The Commission finds no lack of clarity in the statutory wording, and finds it unnecessary to transfer the issue, to the Court. RSA 369:7 specifically provides two alternative methods by which a utility's short term borrowing may be analyzed. The Commission may either establish, by rules, the amount of borrowings which a company can make without specific investigation of a particular borrowing, or it may, upon specific investigation of a particular borrowing, issue an order setting forth the borrowing limits which the record in that docketed investigation justifies.

Accordingly, the Commission will not transfer the question to the Supreme Court.

Our Order will issue accordingly.

ORDER

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

ORDERED, that the Consumer Advocate's request that the Commission investigate PSNH's intention to raise $150 Million in short term debt is denied; and it is

FURTHER ORDERED, that the Consumer Advocate's request that the Commission develop rules pursuant to RSA 541-A relative to the issuance of debt is denied without prejudice; and it is

FURTHER ORDERED, that the Consumer Advocate's request that the Commission transfer the question of "... what entails on (sic) individual case" to the Supreme Court is hereby denied.

By Order of the Public Utilities Commission of New Hampshire this sixth day of May, 1987.

Opinion of Commissioner Aeschliman

[i] I would grant the petition of the Consumer Advocate and I would consolidate the investigation with the long-term financing proceeding in docket DF 87-4.

The financial situation of the Company has changed substantially since the shortterm debt authorizations were granted by this Commission. When the authority was increased to $220 million by Order No. 17,139 in July 1984, all of the authorization was required for existing debt as part of the restructure of the Company's obligations. When these obligations were converted to longer term debt in July, 1985 the question of short-term debt authorization was not an issue because the Company did not have the opportunity to borrow additional funds on a short-term basis. Since that time the Company has continued to indicate that short-term financing was not possible given the financial condition of the Company. The Company's recent indication that it was pursuing short-term borrowing is the first indication the Commission has had that this is an avenue open to the Company.

If the Commission affirms the effectiveness of the 1984 Order authorizing up to $220 million in short-term debt and grants the authority requested in DF 87-4, the Company will have the ability to increase its indebtedness by $440 million without an investigation into the financial condition of the Company. Consistent with my opinion regarding the proper scope of review in DF 87-4, I do not believe the Company should be increasing its indebtedness

pending an appropriate review in that case. The purpose of consolidating an investigation of the short-term financing with that proceeding would be to provide the flexibility to approve short-term financing sufficient to carry the Company during the proceeding should it be demonstrated that such financing was essential.

==========

[Go to End of 60215]

Re Lakes Region Water Company, Inc.

DE 87-16
Order No. 18,665

New Hampshire Public Utilities Commission

May 11, 1987

PETITION by water utility for authority to initiate service in new areas; granted with conditions.

CERTIFICATES, § 125 — Water service — Provisional authority — Temporary rates.

[N.H.] Pending receipt of comments from the public, a water utility was granted conditional authority to extend service to new residential developments and to charge for service already rendered, based on a temporary flat quarterly rate.

By the COMMISSION:

ORDER

WHEREAS, Lakes Region Water Company, Inc. (Lakes Region), a water public utility operating under the jurisdiction of this Commission, by a petition filed on February 2, 1987, seeks authority under RSA 374:22 and 26 as amended, to establish a water utility in the Town of Wolfeboro and Tuftonboro; and

WHEREAS, no other water utility has franchise rights in the area sought; and

WHEREAS, Lakes Region, by a further petition filed on April 13, 1987, seeks authority under RSA 378:27, to charge temporary rates for water service now being provided; and

WHEREAS, at a duly noticed pre-hearing conference held on April 21, 1987, Lakes Region testified that it is able and willing to supply water service in the area sought and presented financial data to support its proposed temporary rate of $190.00 per year; and

WHEREAS, Lakes Region and the Commission Staff have entered into a Stipulation Agreement that recommends that the Commission grant the authority sought in the instant petitions; and

WHEREAS, after investigation and consideration, the Commission is satisfied that the granting of these petitions 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 these petitions; it is hereby

ORDERED, that all persons interested in responding to the petitions be notified that they may submit their comments to the Commission or may submit a written request for a hearing in this matter no later than June 3, 1987; 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 May 20, 1987, and designated in an affidavit to be made on a copy of this Order and filed with this office and that individual notice be given to each customer in the area proposed to be served; and

FURTHER ORDERED, NISI, that Lakes Region, be authorized pursuant to RSA 374:22, to operate as a water public utility in limited areas of the Towns of Wolfeboro and Tuftonboro in an area known as Hidden Valley Shores Development, with boundaries as shown on a map on file in the Commission offices; and it is

Page 165

FURTHER ORDERED, NISI, that Lakes Region be authorized pursuant to RSA 378:27 to charge the temporary annual rate of $190 per year, billed quarterly in arrears, commencing July 1, 1987 for all service rendered on or after May 13, 1987; and it is

FURTHER ORDERED, that such authority shall be contingent upon the filing of statements from the Towns of Wolfeboro and Tuftonboro that they have no objection to Lakes Region providing water service in the area sought.

By order of the Public Utilities Commission of New Hampshire this eleventh day of May, 1987.

==========

NH.PUC*05/11/87*[60216]*72 NH PUC 166*D. J. Pitman International Corporation

[Go to End of 60216]

72 NH PUC 166

Re D. J. Pitman International Corporation

DR 85-139
Order No. 18,667

New Hampshire Public Utilities Commission

May 11, 1987

ORDER rescinding approval of a small power producer's long-term rate filing.

COGENERATION, § 24 — Rates — Rescission of approval — Factors.

[N.H.] A small power producer's approved long-term rate filing was rescinded where, because of federal licensing problems and delays, the producer had made little progress in the development of its project and could not possibly meet the commercial in-service date on which the approved rate filing had been premised.

APPEARANCES: Brown, Olson & Wilson by Michael A. Walker, Esq. for D.J. Pitman; Thomas B. Getz, Esq. for Public Service Company of New Hampshire; Joseph Rogers, Esq. for the Consumer Advocate; Martin C. Rothfelder, Esq. for the Commission and the Commission Staff.

By the COMMISSION:

REPORT

I. PROCEDURAL HISTORY

On May 8, 1985 D.J. Pitman International Corporation (Pitman) filed a petition with the Commission pursuant to Re Small Energy Producers and Cogenerators, Docket No. 83-62, Report and Eighth Supplemental Order No. 17,104, 69 NH PUC 352, 61 PUR4th 132 (1984) (Order No. 17,104), for approval of a long term rate for the sale of electricity to Public Service Company of New Hampshire (PSNH) from its proposed 560 KW hydroelectric project at the Macallen Dam. Pitman amended its petition on May 9, 1985 and on June 5, 1985, and the Commission approved Pitman's petition nisi by Order No. 17,647, (70 NH PUC 511), which Order became effective on July 5, 1985. On February 9, 1987, the Commission issued Order No. 18,563 stating that "independent investigation by the Commission has revealed that Pitman has not yet begun construction of its project" and ordered Pitman "to show cause why approval of the long term rate filing of Pitman ... should not be rescinded." The Commission granted Pitman an extension of time on February 13, 1987 and continued the hear- ing until April 8, 1987. On April 8, 1987, Pitman filed a Petition for a Declaratory Ruling based on the documentation it had filed, asserting that the primary issue was the legal issue of the proper interpretation of the required on-line date of the project rather than a factual issue. The Commission allowed the parties to file whatever petition or memorandum they believed appropriate following review of Pitman's motion and accompanying document. Accordingly, PSNH filed a Memorandum Recommending Rescission

of Order No. 17,647

on April 22, 1987, and Pitman late filed a Reply on April 24, 1987.

II. POSITION OF THE PARTIES

In its Petition for a Declaratory Ruling, Pitman asserts that its failure to commence construction was a result of the length of the Federal Energy Regulatory Commission (FERC) licensing procedures and is therefore due to circumstances beyond its control. It also asserts that a proper interpretation of Order No. 17,104 is that Pitman's Long Term Rate is valid so long as the project is on-line by August 31, 1988.

Public Service Company of New Hampshire argues in its Memorandum Recommending Rescission of Order No. 17,647 that Pitman's contentions are largely irrelevant and the proper focus in this case is the reliability of the representations made by Pitman in its May 8, 1985 filing. PSNH asserts that Pitman's representation of any on-line date was based on speculation, not fact and, consistent with the Commission's rulings in similar cases,*(60) the Commission should find that Pitman's rate filing was premature and rescind Order No. 17,647.

In its Reply, Pitman argues that the decisions in Pine Island, Buck Street and Wiswall Dam created a new rule concerning eligibility requirements without notice and subsequent to the approval of Order No. 17,647. Further, Pitman argues that since neither PSNH nor the Commission raised the issue of Pitman's competitive licensing situation as being a bar to approval of Pitman's rate application at the time of its original petition, neither can raise the issue at this time.

III. COMMISSION ANALYSIS

Pitman is in error when it states that the rate year 1987 is equivalent to a power year commencing September 1, 1987 and ending August 31, 1988. Order 17,104 clearly states:

For facilities on line before September 1, the year in which the facility first supplies power under the long term rate is considered to be the initial year for rate calculations. For facilities on line after September 1, the following year will be considered as the initial year. 69 NH PUC at 365, 61 PUR4th at 145.

Thus, the 1987 rate year begins September 1, 1986 and ends August 31, 1987. Pitman does not contend that there is any possibility that it will be able to achieve commercial operation before August 31, 1987 or in any reasonable period thereafter.

The Commission unequivocably stated in Buck Street, Pine Island, and Wiswall Dam, that the lack of an approved FERC license or an uncontested FERC license application was grounds for denying a long term rate petition as premature. In Buck Street and Pine Island, Order No. 17,916 the Commission explicitly stated its reasons for stressing the importance of the FERC license (70 NH PUC 865, 866):

As part of the long term rate filing, the developer must represent that beginning in a specified year he will sell the output from a project of a stated size to Public Service Company of New Hampshire and provide reliable service over the life of the obligation. Representations must be based on fact, not speculation, and NHC [National Hydroelectric Corporation] has not presented convincing evidence that it can fulfill these representations for either site. While, as stated, in NHC's motion for rehearing, the FERC regulations may favor NHC in the competitive process, it is this Commission's experience that until the FERC renders a definitive decision on a contested license application, a developer has no surety that he will obtain the right to develop the proposed sites. Without that surety, NHC is in no position to make the above representations before this Commission.

Thus, where the Commission has known that a developer had not yet obtained his

Page 167

FERC license, the Commission has rejected the rate application as premature.

Pitman asserts that it informed the Commission that its license application was being contested at FERC in that its petition disclosed that it was a "first-in time priority license applicant at the Federal Energy Regulatory Commission." As neither the Commission nor its Staff understood this phraseology to indicate that the Pitman license was being contested at the FERC, the Commission approved Pitman's petition for a long term rate. Since Pitman relied on

the approval of its rate to go forward with its project, we will not now rescind the rate on the basis that it was invalid ab initio due to the lack of the FERC license.

However, Pitman's experience at the FERC confirms the Commission judgment, then and now, that developers whose licenses are being contested cannot make valid representations concerning the commercial operation dates of their projects. Pitman errs in its Reply when it characterizes the Commission analysis and findings in Pine Island, Buck Street and Wiswall Dam as creating new rules concerning eligibility requirements. Rather, those findings reflect the Commission assessment that there is simply insufficient time between the filing of a rate petition and the last available commercial operation date pursuant to the rate order for a developer to both resolve the licensing difficulties and construct his project. Indeed, in the instant case even at the time of its Petition for a Declaratory Ruling, Pitman could only aver that it was still "currently pursuing ... licensing at the FERC" and not that it had obtained license approval. Pitman disregarded Commission analysis in regard to the necessary project maturity at the time of its rate filing and erred in believing that it could fulfill the representations made in its petition. However, this error does not now entitle it to continued eligibility for the rates that were granted in Order 17,647 (70 NH PUC 511) on the basis that it could and would reasonably fulfill its obligations as stated in the rate order.

Therefore, we find that, based on the impossibility of Pitman's complying with the conditions set out in its rate order, Pitman has failed to show cause why approval of its long term rate filing should not be rescinded.

Our Order shall issue accordingly.

ORDER

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

ORDERED, that approval of D.J. Pitman International Corporation's long term rate filing, including the interconnection agreement and the rates set forth on the long term rate filing, be, and hereby is, rescinded.

By Order of the Public Utilities Commission of New Hampshire this eleventh day of May, 1987.

Concurring Opinion of Commissioner Aeschliman

I concur with the conclusion that the delays cited by Pitman do not provide sufficient reason for Pitman to be entitled to continued eligibility for the rates that were granted in Order No. 17,647. To allow developers to hold rate orders indefinitely or to use existing rate orders for substantially changed projects creates a discriminatory situation in a period of declining avoided costs relative to developers who apply for a rate order at a later time.[1(61)] These were concerns which the Commission addressed in Re New England Alternate Fuels, Inc. — Swanzey, DR 86-152, Report and Order No. 18,343, 71 NH PUC 423 (1986). (NEAF) The Commission has raised similar concerns about project maturity and discrimination in determining whether project development was sufficiently mature for a rate order to be issued. Re Pinetree Power-North, DR 86-100 et al., Report and Order No. 18,468, 71 NH PUC 638, (1986).

I believe the Commission has a responsibility to monitor the progress of small power producers (SPPs). To the extent that

developers have not proceeded with construction of their projects and clearly can no longer develop their projects in the time frame contemplated by the original petition and order, their rate orders should be rescinded. If a developer is subsequently able to resolve the development problems, he may reapply for a rate order.

Monitoring of Commission approved projects and rescinding orders where appropriate is also critical in assuring that supply projections are accurate. If developers are permitted to retain rate orders for projects that are not progressing and may never come to fruition, the accuracy of supply projections is hindered. In addition, since SPP supply projections are an important component in setting avoided cost rates, inflated projections result in lower avoided cost rates to new applicants. This is not only unfair to new applicants, but may result in bringing on a less than optimal amount of new supply.

However, I did not intend that the NEAF decision be interpreted as asserting a Commission right to rescind rate orders where the project on-line date was missed. I do not believe that the avoided cost methodology of DR 83-62 adopted a so-called "dropdead" date, i.e., rate orders could be rescinded for failure to meet a project's online date. Where developers have proceeded with construction based upon a good faith reliance upon Commission rate orders, I do not believe the orders can or should be rescinded.

In fact, if the Commission had adopted the on-line date as a "drop-dead" date there would be no need to spend time in assessing a project's maturity since the developer would assume all the risk if the project was not mature and did not come on-line as scheduled. In the future the Commission could adopt such a rule, but it should be clearly stated in advance.

There is a substantial difference between rescinding rate orders for projects that have experienced development problems and have not advanced and rescinding rate orders for projects that have advanced and proceeded to construction even though they may miss their on-line date by a few months. I believe it is important for developers to have a clear understanding of the Commission's position in this regard, because projects that have been approved and are progressing may be jeopardized if the developer fears that the rate order will be jeopardized by any delay beyond the on-line date.

FOOTNOTES

Report

*Re Northeast Hydrodevelopment Corp., Docket No. DR 85-187, Report and Order No. 17,754, 70 NH PUC 646 (1984), and Docket Nos. DR 85-185, DR 85-187, Supplemental Order No. 17,916, 70 NH PUC 865 (1985) (Pine Island), Re Northeast Hydrodevelopment Corp., Docket No. DR 85-185, Order No. 17,753, 70 NH PUC 645 (1985) and Docket Nos. DR 85-185, DR 85-187, Supplemental Order No. 17,916, 70 NH PUC 865 (1985) (Buck Street) and Re Wiswall Hydroelectric Associates, Docket No. DR 86-137, Order No. 18,267, 71 NH PUC 312 (1986) (Wiswall Dam).

Concurring Opinion

[1]Under the DE 83-62 methodology developers are protected by the "buy-out" provision in a period of increasing avoided costs.

==========

[Go to End of 60217]

72 NH PUC 169

Re HDI-Hinsdale Inc. — Upper Robertson Dam

DR 84-347
Order No. 18,668

New Hampshire Public Utilities Commission

May 11, 1987

ORDER rescinding approval of an undeveloped hydroelectric project's long-term rate filing.

COGENERATION, § 24 — Rates — Rescission of approval — Factors.

[N.H.] Where a hydroelectric project developer had received approval of a long-term rate filing

on the assumption that it already held requisite federal licenses for the project, but in fact the developer had not been licensed and had experienced numerous licensing delays, unforeseen by the developer but not unforeseeable, the commission rescinded the developer's long-term rate authority, noting that there was no possibility that the developer could meet its scheduled inservice date.

By the COMMISSION:

REPORT

I. PROCEDURAL HISTORY

On November 19, 1984 HDI-Hinsdale, Inc. (HDI) petitioned the Commission for a long term rate for a proposed hydroelectric project known as the Upper Robertson Dam pursuant to 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) (Order No. 17,104). HDI amended its petition on January 7, January 10 and January 24, 1985 to correct arithmetical and typographical errors. On February 5, 1985 by Order No. 17,434, (70 NH PUC 49), the Commission approved nisi a 29 year rate commencing in power year 1987. Public Service

Company of New Hampshire (PSNH) filed comments on February 27, 1985 and HDI responded on March 5, 1985. On March 6, 1985, by Order No. 17,485 (70 NH PUC 87), the Commission confirmed the effectiveness of Order No. 17,434. On April 8, 1987, HDI filed a Motion to Amend its Long Term Rate Filing Pursuant to DE 83-62 and on April 23, 1987, PSNH filed a Motion to Rescind Order Nos. 17,434 and 17,485.

II. POSITION OF THE PARTIES

In its Motion of April 8, 1987, HDI states that it filed its license exemption application with the Federal Energy Regulatory Commission (FERC) on January 30, 1985, and the FERC accepted the application on or about May 30, 1985. HDI's application was contested by Ashuelot Hydro Partners, Ltd. (Ashuelot) on July 10, 1985 and the period since July 1985 has been characterized by applications, motions and responses before the FERC. At the present time the FERC has granted HDI an exemption from licensing for the Upper Robertson Dam but Ashuelot's motion for rehearing on the FERC denial of its appeal of the FERC denial of its license application is still pending. HDI asserts that "the substantial delays to the process occasioned by the actions of Ashuelot Hydro were completely unforeseeable by HDI and were totally outside of its control." However, as a result of the delays in licensing, HDI has not been able to acquire financing or commence construction at the Upper Robertson Dam. HDI argues that it is entitled to retain the benefits of the long term rate granted under Order No. 17,434 and asks to amend its rate filing to incorporate a 28 year levelized rate with a start year of 1988 to reflect the now anticipated commercial operation date of March 31, 1988.

In its Motion to Rescind Order Nos. 17,434 and 17,485, PSNH notes that in three instances*(62) the Commission has found that a hydro developer cannot represent that he will have output to sell until he has obtained a license from the FERC resolving all conflicting interests. PSNH contends that the HDI "filing was invalid ab initio because it was made prior to resolution of the FERC licensing issues." PSNH argues that HDI's representation of an on-line date was speculative, contrary to Commission definitions of developers' responsibilities in regard to the representations made in their rate filings as explained in Pine Island and Buck Street. Finally consistent with the Commission's order in Re New England Alternate Fuels, Inc., Docket No. 86-152, Report and Order No. 18,284, 71 NH PUC 334 (1986) (NEAF), PSNH argues that "HDI's failure to be on-line by the time represented in its rate filing would, irrespective of other factors, invalidate any rate order."

Page 170

III. COMMISSION ANALYSIS

The Commission unequivocably stated in Buck Street, Pine Island, and Wiswall Dam, that the lack of an approved FERC license or an uncontested FERC license application was grounds for denying a long term rate petition as premature. In Buck Street and Pine Island, Order No. 17,916 the Commission explicitly stated its reasons for stressing the importance of the FERC license (71 NH PUC 865, 866):

As part of the long term rate filing, the developer must represent that beginning in a specified year he will sell the output from a project of a stated size to Public Service Company of New Hampshire and provide reliable service over the life of the obligation. Representations must

be based on fact, not speculation, and NHC [National Hydroelectric Corporation] has not presented convincing evidence that it can fulfill these representations for either site. While, as stated, in NHC's motion for rehearing, the FERC regulations may favor NHC in the competitive process, it is this Commission's experience that until the FERC renders a definitive decision on a contested license application, a developer has no surety that he will obtain the right to develop the proposed sites. Without that surety, NHC is in no position to make the above representations before this Commission.

Thus, where the Commission has known that a developer had not yet obtained his FERC license, the Commission has rejected the rate application as premature.

Nowhere in its original filing did HDI define its status in regard to its FERC license. Therefore, when the Commission approved HDI's long term rate, it was unaware that HDI had not only not obtained a license to develop the Upper Robertson Dam, but that it had not applied until January 30, 1985 (well after its rate petition) and that its FERC filing would be contested by Ashuelot. However, since HDI relied on the approval of its rate to go forward with its project, we will not now rescind the rate on the basis that it was invalid ab initio due to the lack of the FERC license.

However, HDI's experience at the FERC confirms the Commission judgment, then and now, that developers whose licenses are being contested cannot make valid representations concerning the commercial operation dates of their projects. There is simply insufficient time between the filing of a rate petition and the last available commercial operation date pursuant to the rate order for a developer to both resolve the licensing difficulties and construct its project. Indeed, in the instant case even at the time of its Motion to Amend its Long Term Rate Filing, there remains an outstanding Motion for Rehearing before the FERC on the Upper Robertson Dam. HDI errs when its claims that the delays that occurred in the FERC licensing process were "completely unforeseeable by HDI and were totally outside of its control." The delays may have been unforeseen by HDI, but they were certainly not unforeseeable. It is the very likelihood of such delays and the fact that they are outside of the control of the developer that has led to the Commission policy of rejecting rate filings on projects whose developers lack an FERC license or uncontested license application. HDI discounted Commission analysis in regard to the necessary project maturity at the time of its rate filing and erred in believing that it could fulfill the representations made in its petition. However, this error does not now entitle it to retain the benefits of the long term rates that were granted in Order 17,485 on the basis that HDI could and would reasonably fulfill its obligations as stated in the rate order. HDI now asserts that it anticipates an on-line date of March 31, 1988 and requests an amendment to its rate to reflect that delay. However, such an on-line date and start year for a rate is beyond the last available date available pursuant to Order No. 17,104. Consistent with our findings in NEAF, Order No. 18,284 and Report and Order No. 18,343 (July

23, 1986) (71 NH PUC 423), we find that delays that were unanticipated by the developer are insufficient reason to waive the developer's obligations under his rate order. To find otherwise would result in the potential for providing preferential or discriminatory treatment for a project compared, in the instant case, with projects whose licensing issues were resolved prior to their

long term rate applications. See Re Pinetree Power-North, Docket No. DR 86-100 et al., Report and Order No. 18,468, 71 NH PUC 638 (1986).

Thus, while we do not find that Order No. 17,485 (70 NH PUC 87) was invalid ab initio, we do find that the delays cited by HDI provide insufficient reason to allow HDI to amend its long term rate to incorporate a start year beyond the last date available pursuant to Order No. 17,104 (69 NH PUC 352, 61 PUR4th 132), and that based on the impossibility of HDI's fulfilling its obligations set forth in its rate application, HDI's long term rate order should be rescinded.

Our Order shall issue accordingly.

ORDER

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

ORDERED, that HDI Hinsdale, Inc.'s Motion to Amend its Long Term Rate Filing Pursuant to DE 83-62 be, and hereby is, denied; and it is

FURTHER ORDERED, that Order No. 17,434 (70 NH PUC 49) and Order No. 17,485 (70 NH PUC 87) approving HDI Hinsdale's Petition for a Twenty-nine Year Rate Order including the Interconnection Agreement and the rates set forth on the long term rate worksheet be, and hereby are, rescinded.

By Order of the Public Utilities Commission of New Hampshire this eleventh day of May, 1987.

Concurring Opinion of Commissioner Aeschliman

I concur with the conclusion that the delays cited by HDI provide insufficient reason to allow HDI to amend its long term rate to incorporate a start year beyond the last date available pursuant to Order No. 17,104. To allow developers to hold rate orders indefinitely or to use existing rate orders for substantially changed projects creates a discriminatory situation in a period of declining avoided costs relative to developers who apply for a rate order at a later time.[1(63)] These were concerns which the Commission addressed in Re New England Alternate Fuels, Inc. — Swanzey, DR 86-152, Report and Order No. 18,343, 71 NH PUC 423 (1986). (NEAF) The Commission has raised similar concerns about project maturity and discrimination in determining whether project development was sufficiently mature for a rate order to be issued. Re Pinetree Power, DR 86-110 et al., Report and Order No. 18,468, 71 NH PUC 638 (1986).

I believe the Commission has a responsibility to monitor the progress of small power producers (SPPs). To the extent that developers have not proceeded with construction of their projects and clearly can no longer develop their projects in the time frame contemplated by the original petition and order, their rate orders should be rescinded. If a developer is subsequently able to resolve the development problems, he may reapply for a rate order.

Monitoring of Commission approved projects and rescinding orders where appropriate is also critical in assuring that supply projections are accurate. If developers are permitted to retain rate orders for projects that are not progressing and may never come to fruition, the accuracy of supply projections is hindered. In addition, since SPP supply projections are an important component in setting avoided cost rates, inflated projections result in lower avoided cost rates to new applicants. This is not only unfair to new applicants, but may result in bringing on a less

than optimal amount of new supply.

However, I did not intend that the NEAF decision be interpreted as asserting a Commission right to rescind rate orders where

Page 172

the project on-line date was missed. I do not believe that the avoided cost methodology of DR 83-62 adopted a so-called "dropdead" date, i.e., rate orders could be rescinded for failure to meet a project's online date. Where developers have proceeded with construction based upon a good faith reliance upon Commission rate orders, I do not believe the orders can or should be rescinded.

In fact, if the Commission had adopted the on-line date as a "drop-dead" date there would be no need to spend time in assessing a project's maturity since the developer would assume all the risk if the project was not mature and did not come on-line as scheduled. In the future the Commission could adopt such a rule, but it should be clearly stated in advance.

There is a substantial difference between rescinding rate orders for projects that have experienced development problems and have not advanced and rescinding rate orders for projects that have advanced and proceeded to construction even though they may miss their on-line date by a few months. I believe it is important for developers to have a clear understanding of the Commission's position in this regard, because projects that have been approved and are progressing may be jeopardized if the developer fears that the rate order will be jeopardized by any delay beyond the on-line date.

FOOTNOTES

Report

*Re Northeast Hydrodevelopment Corp., Docket No. DR 85-187, Report and Order No. 17,754, 70 NH PUC 646 (1984), and Docket Nos. DR 85-185, DR 85-187, Supplemental Order No. 17,916, 70 NH PUC 865 (1985) (Pine Island), Re Northeast Hydrodevelopment Corp., Docket No. DR 85-185, Order No. 17,753, 70 NH PUC 645 (1985) and Docket Nos. DR 85-185, DR 85-187, Supplemental Order No. 17,916, 70 NH PUC 865 (1985) (Buck Street), and Re Wiswall Hydroelectric Associates, Docket No. 86-137, Order No. 18,267, 71 NH PUC 312 (1986) (Wiswall Dam).

Concurring Opinion

[1]Under the DE 83-62 methodology developers are protected by the "buy-out" provision in a period of increasing avoided costs.

==========

72 NH PUC 173

Re New Hampshire Electric Cooperative, Inc.

DR 87-71
Order No. 18,669

New Hampshire Public Utilities Commission

May 12, 1987

ORDER allowing an electric cooperative to pass through a federally approved wholesale power rate increase.

AUTOMATIC ADJUSTMENT CLAUSES, § 13 — Purchased power — Wholesale rate increases — Federal approval.

[N.H.] An electric cooperative was allowed to increase its purchase power adjustment charge to reflect a similar increase in wholesale rates charged by its power supplier and approved by federal authorities.

By the COMMISSION:

ORDER

WHEREAS, By letters to the Commission dated April 13, and 24, 1987 the New Hampshire Electric Cooperative (Cooperative) filed a petition requesting changes to its Purchase Power Adjustment Charge; and

WHEREAS, the Cooperative's proposed Purchase Power Adjustment Charge includes an increase in the wholesale rates charged by Public Service Company of New Hampshire (PSNH); and

WHEREAS, the proposed PSNH wholesale rates were made effective on May 2, 1987 subject to refund pending final Federal Energy Regulatory Commission Order in FERC Docket No. ER 87-277-000; it is hereby

ORDERED, that the Cooperative's proposed tariff, First Revised Page 15 be, and hereby is, approved for effect on May 15, 1987; and it is

FURTHER ORDERED, that the

Cooperative submit a revised tariff reflecting the final rates and any refund so ordered by FERC.

By order of the Public Utilities Commission of New Hampshire this twelfth day of May, 1987.

==========

NH.PUC*05/13/87*[60220]*72 NH PUC 174*Merrimack County Telephone

[Go to End of 60220]

72 NH PUC 174

Re Merrimack County Telephone

DE 87-67
Order No. 18,671

New Hampshire Public Utilities Commission

May 13, 1987

ORDER approving special arrangements for emergency call conferencing telephone service.

RATES, § 553 — Telephone service — Emergency call conferencing — Special contracts.

[N.H.] The commission approved a special rate contract under which a local exchange telephone carrier would install the necessary equipment to provide emergency call conferencing service to the local fire department.

By the COMMISSION:

ORDER

WHEREAS, on April 6, 1987, Merrimack County Telephone filed with this Commission its Special Contract No. MCT-004 under which it proposed to offer Emergency Call Conferencing for the Fire Department of the Town of Sutton, New Hampshire; and

WHEREAS, such conferencing service had been provided previously to said town under terms of the Merrimack County Telephone Tariff No. 7 using special equipment in the applicable central office, said equipment now incompatible with the recently installed digital central office; and

WHEREAS, the Town of Sutton has indicated to Merrimack County Telephone that it still desires such service; and

WHEREAS, Merrimack County Telephone has advised this Commission that the appropriate digital equipment is available for operation with its digital switch; and

WHEREAS, Merrimack County Telephone and the Town of Sutton have negotiated the instant special contract under which this service will be offered; and

WHEREAS, the Commission finds such offering in the public good; and

WHEREAS, the Commission finds the rates proposed for such service just and reasonable; it is

ORDERED, that Special Contract No. MCT 004, Merrimack County Telephone and the Town of Sutton (Fire Department) be, and hereby is approved for effect on the date of this order.

By order of the Public Utilities Commission of New Hampshire this thirteenth day of May, 1987.

==========

NH.PUC*05/15/87*[60221]*72 NH PUC 174*Corning Benton — Eagle Island et al.

[Go to End of 60221]

72 NH PUC 174

Re Corning Benton — Eagle Island et al.

DE 87-19
Order No. 18,673

New Hampshire Public Utilities Commission

May 15, 1987

PETITION seeking a service territory boundary change in lieu of condemnation of land in order to allow the provision of electric service to new customers; granted.

EMINENT DOMAIN, § 4 — Right to appropriate property — Alternatives — Territorial boundary changes.

Page 174

[N.H.] Although it is legal for a public utility to condemn private property and take it by eminent domain in order to serve even a single customer, such a course of action is highly disruptive and to be avoided whenever possible; in the instant proceeding, it was discovered that an individual on a private, otherwise uninhabited island could receive service in a less disruptive manner merely by altering service territory boundaries, which the currently franchised utility had no objection to, as all environmental, easement, and permit requirements for effectuating a territorial change had already been fulfilled.

APPEARANCES: For the Bentons, Dom S. D'Ambruoso, Esquire; for Public Service Company of New Hampshire, Thomas B. Getz, Esquire; for New Hampshire Electric Coop, Jeffrey Zellers, Esquire; for the Public Utilities Commission Staff, Martin C. Rothfelder, Esquire.

By the COMMISSION:

REPORT

I. PROCEDURAL HISTORY

On February 5, 1987 a petition was filed on behalf of Corning and Carol Benton to alter service territories in limited areas in the Towns of Gilford and Meredith pursuant to the provisions of RSA 374:22-C (IV). The area in question, Eagle Island in the Town of Gilford is presently within the franchise area of Public Service Company of New Hampshire (PSNH). The petitioner requests that service areas be altered so that Eagle Island may be served from an adjacent island, Pitchwood Island in the Town of Meredith which is within the franchise area of New Hampshire Electric Coop (Coop).

On March 17, 1987 an Order of Notice was issued setting a hearing date of April 2, 1987 at 10:00 AM. On March 20, 1987 the Order of Notice was published in the Union Leader, a newspaper having general circulation in that portion of the state where the subject towns are located.

The hearing on the merits was held on April 2, 1987. At the hearing the Coop presented an oral motion for dismissal on the grounds that it is lawful for a utility to condemn land for a single customer. On April 16, 1987 briefs were filed on behalf of the New Hampshire Electric Cooperative, Public Service Company of New Hampshire and the Petitioner. The Petitioner's brief responded to the motion for dismissal.

II. BACKGROUND

Corning and Carol Benton own a seasonal dwelling located on Eagle Island in Gilford. The island is owned in its entirety by the Bentons and there are no permanent residents. The property lies within the electric service territory of PSNH but does not currently have electric service. In 1984 the Benton's requested service from the company and were informed that they must obtain an easement through adjacent lands for the electric lines. Subject to the Bentons obtaining such an easement and reimbursement for the cost of constructing the lines, PSNH expressed a willingness to serve.

Based on preliminary cost estimates provided by PSNH, the Bentons attempted to obtain easements on Governors Island, the nearest point of land, with no success. Subsequently, they were advised to seek easements on Pitchwood Island, a nearby point of land served by the Coop. Following discussions with representatives of the Coop, the Bentons successfully negotiated an easement and all necessary permits for installation of power lines across property of Irene Bowles on Pitchwood Island. However, the Bentons were belatedly informed by the Coop that they were no longer accepting new island customers outside their currently franchised areas.

PSNH has agreed to the alteration of franchise boundaries but the Coop refuses to accept it. The Coop takes the position that PSNH has not exhausted remedies

available to them for obtaining easements by condemnation. Therefore the Bentons have petitioned for alteration of service territory and an order to the Coop to provide electric service to Eagle Island via the negotiated easement on Pitchwood Island.

III. POSITION OF THE PARTIES

In testimony presented at the hearing and supported by exhibits 1 through 7, the Bentons

described their need for electric service on Eagle Island and their efforts to comply with the requirements of either PSNH or the Coop. The Bentons have in the past served their needs for electricity by means of two small propane powered generators. However, Dr. Benton now suffers a partial physical disability and accordingly needs a greater and more reliable supply of power over continuous periods of use.

Although unable to support excessive costs for line extensions to the island, the Bentons are willing to pay the cost of either of two acceptable options, namely service from Governors Island as estimated by PSNH or from Pitchwood Island as estimated by Mr. Price, an electrician who has contracted with the Coop in the past. In fact, even if the cost were double the amount estimated by Mr. Price, the Bentons would pay for the line extension (Transcript p. 79).

The Petitioners have also accepted responsibility for obtaining the required easements and permits for the line extension. Although unexplored options such as investigating the existing telephone easement on Governors Island and financial negotiations with property owners were not pursued, a good faith effort was made to obtain easements through adjacent land in the PSNH franchise area.

Furthermore, following discussions with a representative of the Coop, the Bentons made every effort to comply with their understanding of the Coop's requirements for providing service. An easement was obtained on Pitchwood Island. A permit was obtained from the New Hampshire Wetlands Board for the water crossing and approval was granted by the Water Supply and Pollution Control Commission. An estimate of cost was obtained from the electrician suggested by the Coop and willingness to proceed on that basis has been expressed.

It is the position of PSNH that they are unable to serve the Bentons because condemnation of property would be needed. They further state that "the property of an individual cannot be taken for a wholly private use".[1](64) They go on to state that the remedy to the inability to obtain an easement on Governor's Island is acquisition of (and presumably use of) an easement on Pitchwood Island.

The Coop takes the contrary position that under the facts of the case, condemnation by PSNH is appropriate[2](65) and claims that the petitioners have failed to properly pursue voluntary (compensated) easements or use of existing easements. With regard to condemnation, the Coop adopts a broad view of public use which is equivalent to public advantage. In this case the question is whether or not a public utility may condemn private property for use by the utility in fulfilling a legislative mandate to serve the public.[3](66) Exercise of eminent domain power to construct a utility line is said to be a proper public purpose based on Merrill v. City of Manchester 127 N.H. 234 (1985). The public interest in preserving the general health and welfare justifies the case of condemnation to provide needed utility service even to an individual customer.

Finally the Coop asserts that "Petitioners have failed to demonstrate the inadequacy of service from" PSNH and therefore the petition to alter service areas should be dismissed.

IV. COMMISSION ANALYSIS

In reviewing the arguments of the parties, the Commission finds that there is sufficient evidence that electric service should be provided to Eagle Island as expeditiously as possible.

The physical disability of Mr.

Benton and the difficulty of providing even minimal electric power is a convincing argument that it is in the public interest for service to be provided.

Having reached this conclusion we now address the question of how service will be provided and which company will provide it. The positions of the two utilities, Public Service Company and the Coop differ on the choice between alteration of service areas as petitioned, or the condemnation of land so PSNH can serve. Neither alternative should be considered lightly and each has been carefully weighed by the Commission.

The Coop has argued convincingly that the alternative of land condemnation on Governor's Island is a legally viable course of action for PSNH. However, the taking of property is a significant undertaking and one which we believe should be entered into only when other, less disruptive alternatives have been exhausted.

The alternative which the petitioner has requested is that service be provided by the Coop. This petition was not initiated recklessly but followed a good faith effort to meet the requirements communicated to the petitioners by the Coop. An easement has been obtained in the format required by the Coop and permits related to wetlands and water quality considerations have been obtained. A contractor experienced in performing the necessary type of electrical construction work for the Coop has been contacted by the petitioner and a cost estimate prepared. The petitioner has agreed to pay for the scope of work identified by the contractor. The next step in the process of obtaining service, as described by the Coop is to alter the franchised service territory of the two companies. Public Service Company has no objection to the alteration.

By their efforts to pursue each step described by the Coop, the petitioners have demonstrated that potential impediments to service from Pitchwood Island are or can be resolved. The same can not be said of the alternative of condemnation on Governor's Island. The only opposition to service from Pitchwood Island comes from the Coop and is based only on a policy not to serve additional islands outside of the existing franchise area. Since the costs of the required line extension would be borne by the petitioners and most permits have already been obtained we see little difficulty for the Coop to provide this service.

We will therefore rule in favor of the petitioners and grant the requested alteration of service area.

Our order will issue accordingly.

ORDER

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

ORDERED, that the oral motion of New Hampshire Electric Coop to dismiss the case is rejected; and it is

FURTHER ORDERED, that the petition of Corning and Carol Benton to alter service territories is granted; and it is

FURTHER ORDERED, that the New Hampshire Electric Coop franchise area be modified to include Eagle Island and that service be provided as expeditiously as possible in accordance with their approved tariff and all applicable codes and statutes including but not limited to the National Electrical Safety Code and the New Hampshire RSA 371:17; and it is

FURTHER ORDERED, that Eagle Island be removed from the franchise area of Public Service Company of New Hampshire.

By order of the Public Utilities Commission of New Hampshire this fifteenth day of May, 1987.

FOOTNOTES

[1]Post hearing memorandum of Thomas B. Getz citing Exeter & Hampton Electric Co. v. Harding, 105 N.H. 317, 319 (March 31, 1964).

[2]New Hampshire Electric Cooperative, Inc. brief dated April 16, 1987, page 3.

[3]New Hampshire Electric Cooperative, Inc. brief dated April 16, 1987, page 5.

==========

NH.PUC*05/18/87*[60222]*72 NH PUC 178*Public Service Company of New Hampshire

[Go to End of 60222]

72 NH PUC 178

Re Public Service Company of New Hampshire

DR 86-41
Order No. 18,674

Re UNITIL Service Company

DR 86-69
Order No. 18,674

Re New Hampshire Electric Cooperative, Inc.

DR 86-70
Order No. 18,674

Re Granite State Electric Company

DR 86-71
Order No. 18,674

Re Connecticut Valley Electric Company

DR 86-72
Order No. 18,674

New Hampshire Public Utilities Commission

May 18, 1987

ORDER rescheduling hearings because of the unavailability of a prime witness.

PROCEDURE, § 20 — Hearings — Rescheduling — Unavailability of witness as a factor.

[N.H.] Due to the unavailability of a utility's key witness on certain days, the commission rescheduled hearings to accommodate the utility and its witness.

By the COMMISSION:

REPORT RESCHEDULING SUBSEQUENT PHASE

On April 20, 1987 the Commission issued Order No. 18,647 scheduling the next phase of hearings for July 7-10, and July 13-14, 1987. The Commission requested that parties file requests to alter the hearing schedule within ten days of the date of that Order. On April 28, 1987, Granite State Electric Company filed a letter with the caption "Request to Alter Hearing Schedule" indicating that their principal witness, John L. Levett, will be unavailable from June 21 through July 17, 1987 due to his enrollment at the University of Michigan Public Utility Executive Course.

Based upon the role that Mr. Levett played in the settlement process in Phase I of this proceeding, and the fact that he is clearly the principal witness of Granite State Electric Company, the Commission finds it reasonable to reschedule this proceeding to accommodate Mr. Levett and Granite State Electric Company.

Based on the foregoing, the Commission considers it reasonable to reschedule this proceeding to July 27 through 31, 1987 and August 3 through August 7, 1987.

Our Order will issue accordingly.

ORDER

Based upon the foregoing Report Rescheduling Subsequent Phase, which is incorporated herein by reference; it is

ORDERED, that the next phase of hearings shall be held on July 27-31, 1987 and August 3-7, 1987 at 10:00 a.m. each day; and it is

FURTHER ORDERED, that the filing date on the list of witnesses and prefiled evidence set in Order No. 18,647 for June 22, 1987 shall be extended to July 2, 1987; and it is

FURTHER ORDERED, that requests to alter the hearing schedule set herein shall be considered timely if filed within ten days of the date of this Order.

By order of the Public Utilities Commission of New Hampshire this eighteenth day of May, 1987.

==========

[Go to End of 60223]

72 NH PUC 179

Re Exeter Energy, Inc.

DE 86-269
Order No. 18,678

New Hampshire Public Utilities Commission

May 18, 1987

PETITION for exemption from zoning restrictions for a tire-fired power plant; denied.

ZONING — Ordinances — Exemptions — Factors.

[N.H.] Where a company planning to build a tire-fired power plant stated that it was exploring several viable sites for the plant, the company's petition for an exemption from a zoning ordinance at one location was denied.

By the COMMISSION:

I. PROCEDURAL HISTORY

Exeter Energy, Inc. (Exeter) filed a petition on October 6, 1986 pursuant to N.H. Rev. Stat. Ann. §674:30 (Supp. 1983) to request, among other things, an exemption from zoning and other land use regulations of the Town of Danville for the purpose of building a waste tire to energy plant. The Public Utilities Commission (PUC or Commission) issued an Order of Notice on October 13, 1986 which required the petitioner to file a memorandum of law addressing the effect of N.H. Rev. Stat. Ann. §674:30 (Supp. 1983), as revised by 1986 N.H. Laws. Ch. 147, on the Commission's authority to grant the exemption. The Order of Notice also stated that parties who sought status as intervenors pursuant to N.H. Stat. Ann. §541-A:17 (1974) and N.H. Admin. Code P.U.C. §203.02, must file a motion to intervene three days prior to the prehearing conference. In response to this Order, Exeter filed a Memorandum of Law in Support of Petition for Exeter Energy on October 24, 1986

W.A.S.T.E. and Resource Electric Corporation (REC) filed motions to intervene on October 27, 1986. At the prehearing con- ference on October 29, 1986, W.A.S.T.E. and REC were granted full intervention status.

On November 10, 1986, REC filed a Motion to Dismiss Exeter's Petition for lack of subject matter jurisdiction and a Memorandum of Law in support of this Motion, and W.A.S.T.E. submitted a Memorandum of Law in support of Motion to Dismiss. On November 13, 1986, Exeter filed an Objec- tion to the Motion to Dismiss and a Memorandum of Law in support of its Objection to the Motion to Dismiss.

The Commission issued Report and Order No. 18,509 that established inter alia the following procedural requirements:

1. the applicant (Exeter Energy, Inc.) shall file its direct testimony and exhibits which it intends to provide to meet its burden of proof on or before January 2, 1987;

2. initial data requests propounded upon the applicant are due January 16, 1987; and

3. responses to data requests propounded upon the Company are due February 2, 1987.

On December 24, 1986 Exeter filed a Motion to Limit Participation of Intervenors which requested that the Commission limit the participation of REC and W.A.S.T.E. in this proceeding.

The Commission issued Order No. 18,595 on March 13, 1987 suspending the procedural schedule because Exeter Energy, Inc. had not yet responded to the Staff's second set of data requests.

On April 16, 1987 the Commission issued Order No. 18,639 ordering Exeter Energy to respond to the Staff's second set of data requests within 20 days. Exeter Energy had not responded as of May 6, 1987.

On May 8, 1987 Exeter Energy filed a letter stating that it was evaluating

Page 179

alternative sites. It requested a sixty day suspension of this case to allow Exeter to determine if one of the alternatives could be developed without Commission action.

II. COMMISSION ANALYSIS

The petitioner asks for a zoning exemption. The law requires that a zoning exemption be granted where it "is reasonably necessary for the convenience or welfare of the public." N.H. Rev. Stat. Ann. §674:30 (Supp. 1983).

In its letter, filed May 5, 1987 Exeter Energy states that it is evaluating other viable siting alternatives. Since these other sites are viable, Exeter has not met its burden of going forward on the issue of whether the zoning exemption is necessary within the meaning of N.H. Rev. Stat. Ann. §674:30. The Commission finds this to be adequate grounds for dismissal.

Due to dismissal on these grounds, the Commission is not required to make findings on the motion to limit intervenors participation or the motion to dismiss for lack of subject matter jurisdiction.

Our Order will issue accordingly.

ORDER

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

ORDERED, that Exeter's October 6, 1986 petition for an exemption from zoning and other land use regulations of the Town of Danville for the purpose of building a waste tire to energy plant is dismissed.

By order of the Public Utilities Commission of New Hampshire this eighteenth day of May, 1987.

72 NH PUC 180

Re Concord Natural Gas Corporation

DF 87-50
Order No. 18,679

New Hampshire Public Utilities Commission

May 20, 1987

ORDER allowing a gas utility to participate in a joint bond issuance with two affiliates.

SECURITY ISSUES, § 44 — Authorization — Factors — Joint issuance with affiliates.

[N.H.] A gas utility was authorized to issue, in conjunction with two affiliates, general and refunding bonds, where the combined transaction would provide considerable savings in interest rates and issuance costs, and would allow the utility to reduce its embedded cost of long-term debt and to retire its volatile short-term debt.

APPEARANCES: David W. Marshall, Esquire for Manchester Gas Company; Eugene F. Sullivan, Merwin R. Sands and Mark H. Collin for NHPUC Staff.

By the COMMISSION:

REPORT

By petition filed March 27, 1987, Concord Natural Gas Corporation (the "Company"), a corporation duly organized and existing under the laws of the State of New Hampshire and operating therein as a gas utility under the jurisdiction of this Commission, seeks authority pursuant to the provisions of RSA 369:1, RSA 369:2 and RSA 369:4 to issue and sell for cash equal to the aggregate principal amount thereof, its General and Refunding Bonds, 8.67%, 15 year maturity, in the aggregate principal amount of $3,000,000.

At a hearing held in Concord on May 14, 1987, the Company submitted the

following exhibits in support of its petition: a statement of the Company's capital structure as of December 31, 1986 proformed to reflect the proposed issue, prefiled testimony of the Company's Vice President and Treasurer, Michael J. Mancini, Jr., proformed income statement as of December 31, 1986, a statement of the estimated issuance expenses for the bonds, a letter

from Teachers Insurance & Annuity Association of America and from the Knights of Columbus to EnergyNorth, Inc. citing terms of purchase and sale of the bonds, as well as the Company's responses to data requests propounded by Staff. A copy of the Bond Purchase Agreement, a copy of the bond, a copy of the General and Refunding Mortgage Indenture and a copy of the Resolution of the Board of Directors were not finalized and will be submitted at a later date. A draft copy of the indenture was submitted after the hearing.

The bonds will carry an annual interest rate of 8.67% with a final maturity of 15 years and an average life of 10 years. Interest is payable semi-annually and the financing is secured by a second mortgage lien on substantially all of the Company's utility property.

The proceeds from the sale of the bonds will be used to retire short term debt which has been utilized by the Company for construction and acquisition of additions and improvements to its plant and facilities. The proceeds will also be used to redeem all existing First Mortgage Bonds of the Company. In addition, the proceeds will also be used for general corporate purposes.

The Company's witness testified that the 8.67% interest rate is very favorable given current market conditions and could not be obtained today on otherwise comparable securities. The witness further testified that the Company examined each issue of its First Mortgage Bonds and fixed rate long term unsecured notes and is redeeming those series that can legally be redeemed at this time at a cost which will serve to reduce the Company's embedded cost of long term debt.

The Company witness also testified as to the benefits received in connection with this issuance resulting from the Company's affiliation with ENI. He explained that these bonds are to be issued in conjunction with bonds from other ENI affiliates, Gas Service, Inc. (DF 87-51) and Manchester Gas Company (DF 87-52). According to the witness, the institutions that will purchase the Company's bonds, Teachers Insurance & Annuity Association and the Knights of Columbus, consider all of the utility company bonds ($5 million each for the Manchester Gas Company and Gas Service and $3 million for the Company) as a single $13 million dollar transaction because of the aggregation of the individual needs of the three utility companies. This provided the Company, Manchester Gas Company and Gas Service, Inc. with a lower interest rate than would have been possible if each bond were treated as a separate issue. It was further claimed that additional savings will result from the sharing of common legal fees and investment banker fees in this transaction. Although this Commission has encouraged a merger in the past, this authorization is not an approval of a future merger. At the time that a merger is proposed, the related issues will be addressed in a separate docket.

Based upon our review of the record, we find the proposed financing to be in the public good. The issuance of these bonds in conjunction with the issuance of similar bonds by Gas Service, Inc. and Manchester Gas Company affiliates of the Company, will result in substantial interest and issuance expense savings. The issuance of the bonds, combined with the proposed redemption of certain existing long term debt, will result in the reduction of the Company's embedded cost of long term debt. Moreover, it will allow the Company to replace relatively volatile short term debt with long term debt having a fixed rate that we find reasonable in light of existing market conditions. We, therefore, will grant the Company'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 applicant, Concord Natural Gas Corporation, be and hereby is, authorized to issue and sell at private sale, for cash equal to the aggregate principal amount thereof, its General and Refunding Bonds, 8.67%, 15 year maturity, in the aggregate principal amount of $3,000,000 having an average life of 10 years; and it is

FURTHER ORDERED, that the proceeds of the issuance and sale of said long term bonds, 8.67%, shall be applied to redeem all of Concord Natural Gas Corporation's First Mortgage Bonds, and, to the extent not required therefore, to retire all of Concord Natural Gas Corporation's short term debt and for other corporate purposes; and it is

FURTHER ORDERED, that Concord Natural Gas Corporation may grant a mortgage lien on substantially all of its utility property to secure payment of such bonds; and it is

FURTHER ORDERED, that the expenses reasonably incurred in connection with the issuance and sale of said bonds, including any redemption premiums incurred to redeem the First Mortgage Bonds and the unamortized debt expenses related to those issues, shall be amortized by Concord Natural Gas Corporation over the life of the bonds in accordance with generally accepted accounting principles; and it is

FURTHER ORDERED, that finalized copies of the bond purchase agreement, the bond, the indenture and the resolution of the Board of Directors be filed with the Commission. An accounting of the final actual issuance costs shall also be filed; and it is

FURTHER ORDERED, that on January 1st and July 1st of each year Concord Natural Gas Corporation shall file with this Commission, a detailed statement, duly sworn to by its Treasurer, showing the disposition of proceeds of said bonds, 8.67%, until the expenditure of the whole of said proceeds shall be fully accounted for.

By Order of the Public Utilities Commission of New Hampshire this twentieth day of May, 1987.

==========

NH.PUC*05/20/87*[60227]*72 NH PUC 182*Gas Service, Inc.

[Go to End of 60227]

72 NH PUC 182

Re Gas Service, Inc.

DF 87-51
Order No. 18,680

New Hampshire Public Utilities Commission

May 20, 1987

ORDER permitting a gas utility to participate in a joint bond issuance with two affiliates.

SECURITY ISSUES, § 44 — Authorization — Factors — Joint issuance with affiliates.

[N.H.] As part of a joint transaction with two other affiliates, a gas utility was authorized to issue general and refunding bonds to be used to retire short-term debt and reduce long-term debt, where the use of a combined issuance would produce favorable interest rates and would lower legal fees and issuance costs.

APPEARANCES: David W. Marshall, Esquire for Manchester Gas Company; Eugene F. Sullivan, Merwin R. Sands and Mark H. Collin for NHPUC Staff.

By the COMMISSION:

REPORT

By petition filed March 27, 1987, Gas Service, Inc. (the "Company"), a corporation duly organized and existing under the laws of the State of New Hampshire and operating therein as a gas utility under the jurisdiction of this Commission, seeks authority pursuant to the provisions of RSA 369:1, RSA 369:2 and RSA 369:4 to issue and sell for cash equal to the aggregate principal amount thereof, its General and

Page 182

Refunding Bonds, 8.67%, 15 year maturity, in the aggregate principal amount of $5,000,000.

At a hearing held in Concord on May 14, 1987, the Company submitted the following exhibits in support of its petition: a statement of the Company's capital structure as of December 31, 1986 proformed to reflect the proposed issue, prefiled testimony of the Company's Vice President and Treasurer, Michael J. Mancini, Jr., proformed income statement as of December 31, 1986, a statement of the estimated issuance expenses for the bonds, a letter from Teachers Insurance & Annuity Association of America and from the Knights of Columbus to EnergyNorth, Inc. citing terms of purchase and sale of the bonds, as well as the Company's responses to data requests propounded by Staff. A copy of the Bond Purchase Agreement, a copy of the bond, a copy of the General and Refunding Mortgage Indenture and a copy of the Resolution of the Board of Directors were not finalized and will be submitted at a later date. A draft copy of the indenture was submitted after the hearing.

The bonds will carry an annual interest rate of 8.67% with a final maturity of 15 years and an average life of 10 years. Interest is payable semi-annually and the financing is secured by a second mortgage lien on substantially all of the Company's utility property.

The proceeds from the sale of the bonds will be used to retire short term debt which has been utilized by the Company for construction and acquisition of additions and improvements to its plant and facilities. The proceeds will also be used to redeem all of two series of the Company's First Mortgage Bonds (Series E & F). In addition, the proceeds will also be used for general

corporate purposes.

The Company's witness testified that the 8.67% interest rate is very favorable given current market conditions and could not be obtained today on otherwise comparable securities. The witness further testified that the Company examined each issue of its First Mortgage Bonds and fixed rate long term unsecured notes and is redeeming those series that can legally be redeemed at this time at a cost which will serve to reduce the Company's embedded cost of long term debt.

The Company witness also testified as to the benefits received in connection with this issuance resulting from the Company's affiliation with ENI. He explained that these bonds are to be issued in conjunction with bonds from other ENI affiliates, Manchester Gas Company (DF 87-52) and Concord Natural Gas (DF 87-50). According to the witness, the institutions that will purchase the Company's bonds, Teachers Insurance & Annuity Association and the Knights of Columbus, consider all of the utility company bonds ($5 million each for the Company and Manchester Gas Company and $3 million for Concord Natural Gas Corporation) as a single $13 million dollar transaction because of the aggregation of the individual needs of the three utility companies. This provided the Company, Manchester Gas Company and Concord Natural Gas Corporation with a lower interest rate than would have been possible if each bond were treated as a separate issue. It was further claimed that additional savings will result from the sharing of common legal fees and investment banker fees in this transaction. Although this Commission has encouraged a merger in the past, this authorization is not an approval of a future merger. At the time that a merger is proposed, the related issues will be addressed in a separate docket.

Based upon our review of the record, we find the proposed financing to be in the public good. The issuance of these bonds in conjunction with the issuance of similar bonds by Manchester Gas Company and Concord Natural Gas Corporation affiliates of the Company, will result in substantial interest and issuance expense savings. The issuance of the bonds, combined with the proposed redemption of certain existing long term debt, will result in the reduction of the Company's embedded cost of long term debt. Moreover, it will allow the Company to replace relatively volatile short term

Page 183

debt with long term debt having a fixed rate that we find reasonable in light of existing market conditions. We, therefore, will grant the Company'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 applicant, Gas Service, Inc., be and hereby is, authorized to issue and sell at private sale, for cash equal to the aggregate principal amount thereof, its General and Refunding Bonds, 8.67%, 15 year maturity, in the aggregate principal amount of $5,000,000 having an average life of 10 years; and it is

FURTHER ORDERED, that the proceeds of the issuance and sale of said long term bonds, 8.67%, shall be applied to redeem all of Gas Service's First Mortgage Bonds, Series E & F, and, to the extent not required therefore, to retire all of Gas Service Inc.'s short term debt and for

other corporate purposes; and it is

FURTHER ORDERED, that Gas Service, Inc. may grant a mortgage lien on substantially all of its utility property to secure payment of such bonds; and it is

FURTHER ORDERED, that the expenses reasonably incurred in connection with the issuance and sale of said bonds, including any redemption premiums incurred to redeem the First Mortgage Bonds and the unamortized debt expenses related to those issues, shall be amortized by Gas Service, Inc. over the life of the bonds in accordance with generally accepted accounting principles; and it is

FURTHER ORDERED, that finalized copies of the bond purchase agreement, the bond, the indenture and the resolution of the Board of Directors be filed with the Commission. An accounting of the final actual issuance costs shall also be filed; and it is

FURTHER ORDERED, that on January 1st and July 1st of each year Gas Service Inc. shall file with this Commission, a detailed statement, duly sworn to by its Treasurer, showing the disposition of proceeds of said bonds, 8.67%, until the expenditure of the whole of said proceeds shall be fully accounted for.

By Order of the Public Utilities Commission of New Hampshire this twentieth day of May, 1987.

==========

NH.PUC*05/20/87*[60228]*72 NH PUC 184*Manchester Gas Company

[Go to End of 60228]

72 NH PUC 184

Re Manchester Gas Company

DF 87-52
Order No. 18,681

New Hampshire Public Utilities Commission

May 20, 1987

ORDER allowing a consolidated issuance of bonds among gas service affiliates.

SECURITY ISSUES, § 51 — Factors — Intercorporate relations — Consolidated issuance.

[N.H.] The issuance of long-term bonds by a gas utility in conjunction with simultaneous issues by affiliates was found to be in the public interest where the consolidated issuance transaction would produce savings in legal fees, interest rates, and issuance costs.

APPEARANCES: David W. Marshall, Esquire for Manchester Gas Company; Eugene F.

Sullivan, Merwin R. Sands and Mark H. Collin for NHPUC Staff.

By the COMMISSION:

REPORT

By petition filed March 27, 1987, Manchester Gas Company (the "Company"), a corporation duly organized and existing under the laws of the State of New Hampshire and operating therein as a gas utility

under the jurisdiction of this Commission, seeks authority pursuant to the provisions of RSA 369:1, RSA 369:2 and RSA 369:4 to issue and sell for cash equal to the aggregate principal amount thereof, its General and Refunding Bonds, 8.67%, 15 year maturity, in the aggregate principal amount of $5,000,000.

At a hearing held in Concord on May 14, 1987, the Company submitted the following exhibits in support of its petition: a statement of the Company's capital structure as of December 31, 1986 proformed to reflect the proposed issue, prefiled testimony of the Company's Vice President and Treasurer, Michael J. Mancini, Jr., proformed income statement as of December 31, 1986, a statement of the estimated issuance expenses for the bonds, a letter from Teachers Insurance & Annuity Association of America and from the Knights of Columbus to EnergyNorth, Inc. citing terms of purchase and sale of the bonds, as well as the Company's responses to data requests propounded by Staff. A copy of the Bond Purchase Agreement, a copy of the bond, a copy of the General and Refunding Mortgage Indenture and a copy of the Resolution of the Board of Directors were not finalized and will be submitted at a later date. A draft copy of the indenture was submitted after the hearing.

The bonds will carry an annual interest rate of 8.67% with a final maturity of 15 years and an average life of 10 years. Interest is payable semi-annually and the financing is secured by a second mortgage lien on substantially all of the Company's utility property.

The proceeds from the sale of the bonds will be used to retire short term debt and the outstanding balance of a revolving long term note, both of which have been utilized by the Company for construction and acquisition of additions and improvements to its plant and facilities. In addition, the proceeds will also be used for general corporate purposes and operations.

The Company's witness testified that the 8.67% interest rate is very favorable given current market conditions and could not be obtained today on otherwise comparable securities. The witness further testified that the Company examined each issue of its First Mortgage Bonds and fixed rate long term unsecured notes and is redeeming those series that can legally be redeemed at this time at a cost which will serve to reduce the Company's embedded cost of long term debt.

The Company witness also testified as to the benefits received in connection with this issuance resulting from the Company's affiliation with ENI. He explained that these bonds are to be issued in conjunction with bonds from other ENI affiliates, Gas Service, Inc. (DF 87-51) and Concord Natural Gas (DF 87-50). According to the witness, the institutions that will purchase the Company's bonds, Teachers Insurance & Annuity Association and the Knights of Columbus,

consider all of the utility company bonds ($5 million each for the Company and Gas Service and $3 million for Concord Natural Gas Corporation) as a single $13 million dollar transaction because of the aggregation of the individual needs of the three utility companies. This provided the Company, Gas Service, Inc. and Concord Natural Gas Corporation with a lower interest rate than would have been possible if each bond were treated as a separate issue. It was further claimed that additional savings will result from the sharing of common legal fees and investment banker fees in this transaction. Although this Commission has encouraged a merger in the past, this authorization is not an approval of a future merger. At the time that a merger is proposed, the related issues will be addressed in a separate docket.

Based upon our review of the record, we find the proposed financing to be in the public good. The issuance of these bonds in conjunction with the issuance of similar bonds by Gas Service, Inc. and Concord Natural Gas Corporation, affiliates of the Company, will result in substantial interest and issuance expense savings. The issuance of the bonds, combined with the proposed redemption of certain existing long term debt, will result in the reduction of the

Page 185

Company's embedded cost of long term debt. Moreover, it will allow the Company to replace relatively volatile short term debt with long term debt having a fixed rate that we find reasonable in light of existing market conditions. We, therefore, will grant the Company'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 applicant, Manchester Gas Company, be and hereby is, authorized to issue and sell at private sale, for cash equal to the aggregate principal amount thereof, its General and Refunding Bonds, 8.67%, 15 year maturity, in the aggregate principal amount of $5,000,000 having an average life of 10 years; and it is

FURTHER ORDERED, that the proceeds of the issuance and sale of said long term bonds, 8.67%, shall be applied to all of Manchester Gas Company's unsecured long term revolving note from Bank of New England, and, to the extent not required therefore, to retire all of Manchester Gas Company's short term debt and for other corporate purposes; and it is

FURTHER ORDERED, that Manchester Gas Company may grant a mortgage lien on substantially all of its utility property to secure payment of such bonds; and it is

FURTHER ORDERED, that the expenses reasonably incurred in connection with the issuance and sale of said bonds shall be amortized by Manchester Gas Company over the life of the bonds, in accordance with generally accepted accounting principles; and it is

FURTHER ORDERED, that finalized copies of the bond purchase agreement, the bond, the indenture and the resolution of the Board of Directors be filed with the Commission. An accounting of the final actual issuance costs shall also be filed; and it is

FURTHER ORDERED, that on January 1st and July 1st of each year Manchester Gas Company shall file with this Commission, a detailed statement, duly sworn to by its Treasurer,

showing the disposition of proceeds of said bonds, 8.67%, until the expenditure of the whole of said proceeds shall be fully accounted for.

By Order of the Public Utilities Commission of New Hampshire this twentieth day of May, 1987.

==========

NH.PUC*05/21/87*[60229]*72 NH PUC 186*Lakes Region Water Company

[Go to End of 60229]

72 NH PUC 186

Re Lakes Region Water Company

DE 86-65
Supplemental Order No. 18,682

New Hampshire Public Utilities Commission

May 21, 1987

ORDER granting extension of franchise and denying request to void private sale of franchise rights.

---

1. SERVICE, § 210 — Extensions — Water utility.

[N.H.] A privately-owned water utility was authorized to extend its franchise area across the boundaries of a municipal water utility where the municipal utility had stated that it would not extend service to the area in question even if requested to do so; nevertheless, authorization for the extension was subject to the following conditions: (1) the municipal utility would provide service to a multi-unit development which it had previously agreed to serve; (2) if future customers in the affected area request a level of service that the private utility is unable to provide and the municipal utility is able and willing to provide such service, then the privately-owned utility shall surrender such applicable portions of the franchise area to the municipal utility without charge to either the municipality or the affected customers. p. 189.

Page 186

2. FRANCHISES, § 51 — Transfer or assignment — Necessity of commission approval.

[N.H.] Although the commission does not approve of the private sale of utility franchises or rights per se, it may not set aside a contract effecting such a sale because the validity and effect of that contract may be adjudicated only by the courts, not the commission. p. 191.

By the COMMISSION:

REPORT

On February 20, 1986 the Lakes Region Water Company filed with this Commission a petition to extend its franchise area into a limited area in the City of Laconia, New Hampshire into an area easterly and southerly of its presently served Wentworth Cove Development.

On March 14, 1986 the Commission issued an order nisi granting the petition effective April 22, 1986 unless a request for hearing was filed prior to April 21, 1986. Notices were sent to Roger L. Matthewman, Superintendent, Laconia Water Works for publication, Dom S. D'Ambruoso, Esquire and Barbara G. Mason for Lakes Region Water Company, James N. Sessler, Esquire, Edgar D. McKean, III, Esquire, and Larry M. Smukler, Esquire, Office of the Attorney General.

On March 28, 1986 an affidavit of publication was received indicating that publication had been made in the Evening Citizen on March 22, 1986.

On May 27, 1986 the Commission was advised by letter of May 22, 1986 that the Laconia Water Works objected to the expansion of the franchise area and requested a rehearing in the matter. A Staff response of June 6, 1986 denied the request for rehearing.

On June 24, 1986 the Commission received a copy of a letter from Dom S. D'Ambruoso, Esquire representing Lakes Region Water Company to Rodger L. Matthewman, Superintendent, Laconia Water Works offering to meet on the issue. Having received no confirmation that resolution had been reached the Commission issued an Order of Notice on February 2, 1987 setting a hearing at its Concord offices at 10:00 in the morning on March 18, 1987.

On February 20, 1987 the Commission was presented a Motion to Intervene on behalf of STAS Associates, Inc.

On March 18, 1987 the Commission issued an Order of Notice setting the hearing date at March 26, 1987 at 10:00 in the forenoon. Certifications were received that the Order of Notice was published in the Laconia Evening Citizen on March 20, 1987 and in the Union Leader on March 21, 1987. The hearing was held as scheduled.

Opening statements by the parties gave the Commission reason to review the specific terms of the petition upon which the nisi order was granted. The petition provided (1) that certain persons or owners of property in the described area desire to have water service; (2) there is no other water utility serving water in the area; and (3) the petitioner is able and willing to supply water. On the basis that certain of those statements may now be in doubt, as brought to light by the fact that the City of Laconia has placed certain restrictions on water service to multiple unit dwellings and which services cannot be met by the petitioner, and since the City of Laconia now contends that it may be able to provide water service to at least portions of the requested franchised area, the Commission granted the request to reopen the hearing.

The hearing reopened on March 25, 1987 to allow the parties proceed as though this were an original request for the franchise area.

Mr. Thomas Mason is the owner and operator of the Lakes Region Water Company which holds a franchise for the Wentworth Cove area of Laconia at the shores of Lake Winnipesaukee. In 1985 the Company acquired an existing water system at a nearby development called

Pendleton Cove, which consisted of a pump and certain distribution piping which had served a small

number of customers since approximately 1970. No franchise authority to operate as a public utility had been requested or granted the previous owner. During 1985 additional distribution system was installed. Total expenditures to date are estimated by Mr. Mason to be $35,951.25.

Mr. Mason testified that the proposed franchise area is a logical extension of his existing Wentworth Cove franchise. From an engineering standpoint there will be an opportunity to eliminate many dead end lines and to provide a series of loops to improve system stability, customers will be less likely to lose water service. From an economic standpoint it will give the Company a larger customer base and will allow for system expansion in areas not presently served by either Pendleton Cove or Wentworth Cove. The two existing systems will be joined together to further improve reliability.

Customers of Pendleton Cove will be charged the same metered rates as those presently charged to Wentworth Cove customers. The current charges are approximately $45 a quarter.

During 1986 a multi-family development was constructed within the Pendleton Cove area along Route 11-A, otherwise known as Winnipesaukee Shore Road. The City of Laconia required, as a provision of the building permit, that water service and fire protection service were to be provided by the City of Laconia. Mr. Mason testified that the existing Pendleton Cove system was inadequate to provide the quantity of water that Laconia required for the multi-family units and that as an alternative to constructing a new system that an agreement was reached whereby for a fee of $10,000 Lakes Region Water Company agreed to relinquish that portion of the Pendleton Cove franchise area serving the multi-family dwelling. For that fee Laconia Water Works was authorized to serve that development and to further extend its future transmission main through the remainder of the proposed franchise area along Winnipesaukee Shore Road as it approached the Town line of Gilford.

Mr. Mason testified that after the agreements were signed Laconia Water Works installed a 12-inch main along Winnipesaukee Road to the multi-family STAS development.

Mr. Mason testified that the Company now asks that the Commission grant the petition originally requested except for that portion along Winnipesaukee Road which serves the STAS property and including a provision that would allow Laconia Water Works to maintain a 12-inch transmission line along Route 11-B, or Winnipesaukee Road.

Mr. Mason testified that his Company employs one part-time and three full-time employees. He intends to upgrade the Pendleton Cove system by installing a 500 gallon storage tank at the present pump house location, a 2,000 gallon high pressure tank at the pump house location and a new pumping station at the corner of Winnipesaukee Shore Road and Pendleton Road. Two more pumps will be purchased. Employees are on call twenty-four hours a day and the Company can be reached during off duty hours through a telephone answering machine. No fire protection is offered or is intended to be offered in the near future.

Mr. Roger L. Matthewman, Superintendent, City of Laconia Water Works testified that the

Weirs is serviced from a pumping station at the shore of Lake Winnipesaukee in the vicinity of the old fire station, from whence water is pumped to an 850,000 tank at the top of the hill by the Brickyard Mountain Corporation. Water is gravity fed down into the entire system of the Weirs. A recently installed 12-inch water main was laid along Route 11-B and runs along the west side of the road to the STAS Associates project. The Company intends eventually to extend that 12-inch main westerly along Route 11-B into the Town of Gilford.

Mr. Matthewman testified that the Board of Water Commissioners in the City of Laconia decided, years ago, that multi-family homes, large complexes, would have to be served by water systems which could meet any ISO fire flow requirements that might

Page 188

exist. Accordingly, since the STAS Development was a multi-family home the City required that STAS be served by the City's own water facilities since it was apparent that Lakes Region would be incapable of providing service which would meet the ISO standards.

Laconia Water Works has taken no steps to provide service to Pendleton Cove residents except for the STAS Development; however, it would like the opportunity to serve those undeveloped areas which are defined within the Lakes Region petition. Laconia Water Works is not interested in serving the existing Pendleton Cove residential customers. The City would like, however, to be able to serve undeveloped lots 80-C and 80-A as identified in the petitioners Exhibit 1 in this docket. Upon crossexamination Mr. Matthewman testified that he knew of no subdivision requests to develop lots 80-C or 80-A, and he testified that the City extends into new areas only when specific requests for water service are made to serve known developments.

Mr. Matthewman testified that he became aware of the fact that the Commission had authorized Lakes Region the Pendleton Cove franchise area only after he was approached by the STAS development representatives, who requested City water. At least one meeting was held between the Water Works, the Lakes Region Company and the developer, and the result was that STAS purchased from Lakes Region the right to serve the limited area of the Lakes Region franchise encompassing the STAS Development, and further authorizing them to extend along Route 11-B into Gilford. A price of $10,000 was set to be paid by STAS for the right to this limited business within the franchised area.

Mr. Stephen Grant, President STAS Associates, testified that the City of Laconia advised him that his proposed developments would have to be served by the City of Laconia. Mr. Grant took that information to Mr. Mason, who did not object to the City's requirement. After spending approximately $700,000 on the multi-family development project, however, he was served with a cease and desist order from the City, resulting from the City's discovery that it would be prohibited from entering Mr. Mason's franchise area. Since Mr. Grant had no apparent alternative means of providing adequate water supply, the City halted the project.

Mr. Grant testified that a meeting subsequently took place between the City, Mr. D'Ambruoso, Mr. Mason and Mr. Grant. As a result of that meeting an agreement dated October 27, 1986 was signed by all parties whereby STAS Associates agreed to pay to Lakes Region Water Company the sum of $10,000 to obtain the consent of Lakes Region to allow the City of Laconia to enter the franchise area of Lakes Region and to supply water to the STAS

Development. The sum of $10,000 with no interest was to be paid in installments of $1,000 each in ten installments to be due and payable upon each sale of the first ten units of the STAS project. Mr. Grant petitions to have the agreement voided.

Staff witness Lessels provided testimony explaining how and when Lakes Region Water Company was franchised as a water utility in Laconia, and showed the history of the City of Laconia acquiring water companies and establishing their service in Laconia and Gilford. He explained that the Commission, by its Order No. 18,173 (71 NH PUC 171), issued an Order Nisi approving the franchise extension effective April 22, 1986. He testified that at the time the petition was submitted to the Commission there was no indication that the City of Laconia or any other water utility were interested in serving the franchised area. Mr. Lessels recommended that the franchise area be granted as originally requested, except for those areas stipulated in the agreement.

COMMISSION ANALYSIS

[1] On March 14, 1986 the Commission issued its Order No. 18,173 authorizing the extension of the franchise area in the form of a judgement nisi, to the Lakes Region

Water Company. The order provided that persons objecting to the authorization should file with the Commission on or before April 21, 1986. Publication was properly made in the local newspaper on March 28, 1986.

The City of Laconia objected to the authorization by letter of May 27, 1986. Testimony in this proceeding by Laconia reveals that their specific objection related to their desire to serve a particular multi-family project identified herein as the STAS Development within the Pendleton Cove Development. After receiving a denial of the request for a rehearing from the Commission through its water engineer, Laconia and STAS entered into an agreement whereby for a fee of $10,000 they gain the right to enter and serve the STAS Development and to extend a distribution or transmission water main along Route 11-B through the franchised area into the Town of Gilford. During the course of these proceedings Laconia requested that the Petitioner's franchised area be reduced to include only an already developed portion of Pendleton Cove, in order that Laconia could itself serve the remaining undeveloped portions of the proposed franchise.

Laconia expressed no interest in serving Pendleton Cove. They also gave no specific intention of serving the undeveloped areas of the franchise since it is their policy only to respond to requests for water service when the requestor agrees to pay all water service extension costs.

When the Commission was asked to reopen this docket, it found on March 18, 1987 that "...the request to reopen the hearing should be granted." (T-29) It said further "...we are going to litigate whether or not a franchise should be granted to Lakes Region Water Company."

Upon hearing the evidence presented in over two days of hearings the Commission finds no persuasive argument that should deny Lakes Region the opportunity to serve at least those residential customers who may request service in the proposed franchise area. Lakes Region has demonstrated a technical and financial capability to serve residential customers in that area and

have demonstrated a desire to connect the proposed franchise to their existing adjacent Wentworth Cove development. The proposed connections will provide an opportunity to improve water flows to both Wentworth Cove and the Pendleton Cove development as well as any additional residential development in the area.

Laconia, on the other hand, has been unpersuasive in its request to serve. The entire franchised area lies within the municipal boundaries of Laconia. Laconia needed no Commission authority to extend its municipal system into the area; had they done so the instant petition would be inappropriate since a municipality has every right to serve whatever portions of that municipality it desires. Laconia has testified, however, that they are not interested in serving Pendleton Cove, and would not if asked to do so. While they are interested in the undeveloped remaining portions of the proposed franchise they are unwilling to commit themselves to serve unless and until certain development occurs which meets the prerequisites of their extension program. No action or proposed action has been noted which persuades the Commission that that area will be served by Laconia.

However, the requirements of the City of Laconia that all multi-family units must be served with fire protection service, and the testimony of the parties that Lakes Region is unable or unwilling to provide such service at this time, convinces us that modifications to our existing franchise authorization are in order. It is in the public interest, both from a practical and economic view that Laconia should be allowed to serve the STAS development. It is also reasonable to understand that Laconia should be allowed to extend its transmission or distribution mains along Route 11-B toward the Town of Gilford.

Since we reopened this docket to "litigate whether or not a franchise should be granted to Lakes Region Water Company" we will redefine the franchise that is to be granted. Lakes Region Water Company shall be granted the authority to operate as a public utility within the geographic

Page 190

boundaries identified in their original petition, with the exception that it will not be granted the franchise to serve the area described herein as the STAS Development.

[2] STAS maintains that the sale of a portion of the utility franchise granted to Lakes Region Water Company by Order No. 18,173 issued March 14, 1986 be set aside. The Commission does not approve of the private sale of utility rights per se. It acknowledges that utility plant and good will are normal assets that acquire value and a franchise may obtain value when the risk of reducing a franchise area is small. It is our view that the franchise area transferred from Lakes Region Water Company to Laconia Water Works had little or no value since it was merely a right acquired but not vested by any investment or reliance. However the parties to that transaction had competent counsel and executed legal documents which can be adjudicated only by the Courts of this state. Therefore, we will deny the request to set aside the contract of sale since it is beyond our authority to do so.

Laconia shall have the right to enter and operate that portion of their water system which serves the STAS Development according to the terms and limitations set forth by the City of Laconia, and shall further have the right to extend its facilities along Route 11-B to the extent

that it so desires in the expansion of its own water system.

With regard to the remaining undeveloped lots within the proposed franchise Lakes Region Water Company will have the opportunity and responsibility to serve those areas at whatever water standard the City of Laconia may require. If future customers of those areas request a level of service which Lakes Region is unable or unwilling to provide, and if the City of Laconia is able and willing to provide such service, then Lakes Region shall surrender such applicable portions of the franchise area without charge to Laconia.

If Lakes Region elects to provide the service, the Commission will require that a least-cost developmental approach shall be implemented which will avoid the risk of duplicative facilities.

Accordingly, we will require that, prior to the construction of any production or transmission facilities within the franchised area, Lakes Region will satisfy the Commission that it has examined all reasonable water supply alternatives including the prospect of purchasing wholesale water from Laconia Water Works and has selected the one which is likely to have the least impact on its customers.

Our Order will issue accordingly.

SUPPLEMENTAL ORDER

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

ORDERED, that Lakes Region Water Company be, and hereby is, authorized to extend its franchise area into a limited area of the City of Laconia, New Hampshire as defined in Exhibits in this docket with the foregoing exceptions: 1. it shall not include that property adjacent to Route 11-B which is identified in this docket as the STAS Development, and 2. the City of Laconia shall have the right to extend its transmission facilities along Route 11-B to the extent that it so desires in the expansion of its own water system; and it is

FURTHER ORDERED, that if future customers within the boundaries of this franchise area request a level of service which Lakes Region is unable or unwilling to provide and if the City of Laconia is able and willing to provide such service then Lakes Region shall surrender such applicable portions of the franchise area without charge to either the City of Laconia or its affected customers.

By order of the Public Utilities Commission of New Hampshire this twenty-first day of May, 1987.

==========

NH.PUC*05/27/87*[60230]*72 NH PUC 192*Public Service Company of New Hampshire

[Go to End of 60230]

72 NH PUC 192

Re Public Service Company of New Hampshire

DE 87-74
Order No. 18,684

New Hampshire Public Utilities Commission

May 27, 1987

ORDER nisi authorizing an electric utility to construct, operate, and maintain an electric power line across public waters.

ELECTRICITY, § 7 — Authorization for transmission lines — Crossing public waters — Public comment.

[N.H.] An electric utility was conditionally authorized to construct, operate and maintain an electrical power line under and across public waters; although finding the proposed construction to be in the public interest, the commission offered the public an opportunity to comment before authorization would become final.

By the COMMISSION:

ORDER

WHEREAS, on April 20, 1987, Public Service Company of New Hampshire filed with this commission a petition seeking a license pursuant to RSA 371:17 to construct, operate and maintain an approximately 2535 foot electric power line of which approximately 2210 feet would be under and across Whitton Pond in Albany and Madison, New Hampshire; and

WHEREAS, the Petitioner plans to construct a 34.5 KV distribution line to accommodate future expansion and operate the line at 7.2 KV to serve a new customer on the other side of the pond; and

WHEREAS, the Petitioner has obtained the necessary dredge and fill permits from the State of New Hampshire Wetlands Board and the Water Supply and Pollution Control Commission; and

WHEREAS, this Commission finds such construction to be in the public good; and

WHEREAS, the public should be offered the 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 June 12, 1987; and it is

FURTHER ORDERED, that the petitioner effect said notification by publication of this order once in a newspaper of general circulation in the area in question, such publication to be no later than June 2, 1987 and documented by affidavit to be filed with this office within 20 days of the date of this order; and it is

FURTHER ORDERED, NISI that the petitioner be authorized, pursuant to RSA 371:17 et seq to construct, operate and maintain electric lines under and across the public waters of Whitton Pond in Albany and Madison, New Hampshire; and it is

FURTHER ORDERED, that all construction meet requirements of the National Electrical Safety Code and all other applicable safety standards; and it is

FURTHER ORDERED, that such authority shall be effective 20 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 twenty-seventh day of May, 1987.

==========

NH.PUC*05/27/87*[60231]*72 NH PUC 193*Pennichuck Water Works, Inc.

[Go to End of 60231]

72 NH PUC 193

Re Pennichuck Water Works, Inc.

DE 86-300
Order No. 18,685

New Hampshire Public Utilities Commission

May 27, 1987

APPLICATION by water utility for authority to provide service in a new development through a satellite system; granted.

CERTIFICATES, § 125 — Water utility — Satellite system — Rate proposals as factors.

[N.H.] A well-established water utility was authorized to initiate a satellite water service in a new real estate development, with the idea that future interconnection with other small water systems in the area would be accomplished; the utility's rate structure of metered rates with both customer and consumption charges was adopted, but its rate of return containing an incentive cost of capital component was not.

APPEARANCES: John B. Pendleton, Esquire and Mary Ellen Kiley, Esquire on behalf of Pennichuck Water Works, Inc.; Martin C. Rothfelder, Esquire on behalf of the Commission Staff.

By the COMMISSION:

REPORT

I. PROCEDURAL HISTORY

On December 1, 1986, Pennichuck Water Works, Inc. (Pennichuck) a public utility providing

water service in the State of New Hampshire, filed a petition to provide service in a limited area in the Town of Derry, New Hampshire, specifically to an area consisting of approximately 42 acres known as Richardson Acres on Damren Road.

A duly noticed hearing was held on March 19, 1987, at which there were no interventions.

II. PETITION

By this petition, Pennichuck seeks authority, pursuant to RSA 374:22, to establish a water utility and provide service to a residential development containing approximately 36 homes located on the westerly side of Damren Road.

The developer, Richardson Properties, Inc. has installed a water system consisting of one well, pumping equipment and a distribution system to serve 36 customers for which Pennichuck has paid the developer $350 per customer. The water system was installed in accordance with standards and specifications of Pennichuck.

Future plans include the interconnection of this system with four other small water systems in this same general area of Derry and currently before the Commission for future hearings.

Pennichuck asserts that its established management, engineering, and demonstrated water system operating experience will benefit the area and customers to be served.

III. RATES

A. Rate Base

Pennichuck proposes a rate base of $19,998 calculated as follows:

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

Cost of acquisition of supply and
distribution system $12,600
Pennichuck labor and materials
allocated to system 2,195
Metering Equipment 3,600
Inventory 500
Working Capital 1,103
Rate Base $19,998

Page 193

The cost of acquisition represents the cost of the fixed capital plant purchased from the developer at $350 per customer ($350 x 36).

B. Expenses

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

1. Operation and Maintenance
Monitoring (superintendence) $4,472
Power 1,500
Maintenance of Equipment 500
Meter Reading 344
Billing and Accounting 182
Management and General
Administration 1,768
Insurance 183
Total $8,949

Some of the above expenses are actual, such as insurance, others such as monitoring, meter reading, billing and accounting are estimated based on actual labor rates at Pennichuck. Power and maintenance costs are estimated based on average data from other small ground water supplied systems.

2. Depreciation

Depreciation expense is derived as follows:

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

Item	Estimated Cost	% of Total	Actual Pennichuck Cost	Distributed Rate	Depreciation
Wells	3,652 (1)	07%	868.07	2.0%	17.36
Pumps	7,500 (1)	14%	1,736.14	10.0%	173.61
Structures	6,000 (1)	11%	1,364.11	2.5%	34.10
Tanks	10,000 (1)	19%	2,356.19	2.0%	47.12
Mains	17,152 (2)	32%	3,968.32	2.0%	79.37
Services	9,000 (3)	17%	2,108.17	2.5%	52.70
Meters	(4) 3,600 (5)	------	3,600.00	5.0%	180.00
Total	56,904 (1)	100%	16,001.00		584.26
Total Cost Estimate Not Including Meters	53,304 (1)		12,401.00		

Notes: (1) Calculated at $8/vertical foot
(2) Calculated at $8/1.f.
(3) Calculated at $250.00 each
(4) Depreciation value shown based on actual cost
(5) Calculated at $100.00 per meter

To develop the depreciable plant and expense it was necessary to allocate the acquisition cost to Pennichuck of $12,600 to various plant accounts based on typical percentages of other similar small water companies. The cost of meters is the actual cost to Pennichuck. For depreciation purposes, a value of $2,394 was developed for water system land, or the well site. The value was derived from the percentage assigned to land by the Town of Derry property tax assessment.

The depreciation rate assigned to individual plant and accounts are typical of

those approved for similar small water companies.

IV. RATE OF RETURN

Pennichuck's original filing included an incentive cost of capital component which provided an overall cost of capital of 14%. Following discussions with the Commission staff, Pennichuck withdrew this request and revised its cost of capital to 11.44%. This revised cost of capital includes the last found cost of common equity for Pennichuck in DR 85-2.

The Commission believes that the 11.44% cost of capital is a just and reasonable rate and accordingly will calculate a reasonable return on rate base as follows:

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


```
Rate Base $19,998%
Cost of Capital 11.44%
                2,288
```

V. REVENUE REQUIREMENT

The revenue requirement is computed as follows:

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

Q & M Expense $8,949
Depreciation Expense 584
Taxes 2,034
Return Requirement 2,288
                  $13,855
```

VI. RATE STRUCTURE

All customers will be metered and billed under a meter rate developed as follows:

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

Customer/Minimum Charge
Depreciation Expense $ 584
Property Tax 1,375
            $1,959


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

$1959 ° 36 customers = $54.42 annual/$4.53
monthly

Consumption Charge

Revenue Requirement $13,855
Less Customer/Minimum 1,959
                     $11,896

$11,896 ° 288,000 cu.ft. = $4.13/100 cu.ft.
```

The 288,000 cubic feet, total consumption, is derived from an estimated annual consumption of 8,000 cubic feet per customer.

COMMISSION ANALYSIS

This Commission is vitally aware of the ever increasing demand for dependable water service in the State of New Hampshire, and more specifically in the southeastern area. We realize also that at present there are three major water utilities capable and in most cases willing to meet the needs of this growing area. We are now meeting with the regional planning commissions serving this area, in an effort to insure orderly growth of water service. These meetings will continue and will include discussions with all water utilities serving this area.

In the instant case, Pennichuck has worked with the developer in the area sought and has assured the Commission that this satellite system will be managed and operated in the same manner as its extensive water system serving the City of Nashua. We realize also that homes have been built and are presently being supplied with water by the system here discussed.

We will approve the franchise request and rates as here requested and as set forth in this Report, as it appears to be in the public good. We are however establishing no precedent to be applied to neighboring and companion petitions sought by Pennichuck in this area and now

before us. In granting this approval we note that the New Hampshire Water Supply and Pollution Control Commission has found that the water system in the proposed franchise territories shall meet its regulations regarding suitability and availability of water. There are no

requirements of the Water Resources Board that are applicable to this project. The Mayor of the Town of Derry has indicated that he has no problem with Pennichuck servicing this area.

Our Order will issue accordingly.

ORDER

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

ORDERED, that Pennichuck Water Works, Inc. be, and hereby is, authorized to conduct operations as a water public utility in the limited area of the Town of Derry described in the foregoing Report; and it is

FURTHER ORDERED, Pennichuck Water Works, Inc. shall file tariff pages reflecting the rate structure as detailed in this Report and which shall become effective for all service rendered on or after the date of this Order.

By order of the Public Utilities Commission of New Hampshire this twenty-seventh day of May, 1987.

==========

NH.PUC*05/27/87*[60232]*72 NH PUC 196*Gas Service, Inc.

[Go to End of 60232]

72 NH PUC 196

Re Gas Service, Inc.

DR 85-405
Eighth Supplemental Order No. 18,686

New Hampshire Public Utilities Commission

May 27, 1987

PETITION for approval of a revised credit surcharge for refunding purposes; granted.

REPARATION, § 39 — Methods — Credit surcharge — Purpose.

[N.H.] A gas utility's refund of temporary rates and rate case expenses was authorized to be accomplished through a revised credit surcharge mechanism.

By the COMMISSION:

SUPPLEMENTAL ORDER

WHEREAS, on April 15, 1987 Gas Service, Inc. filed Original Page 8 to its tariff NHPUC Supplement No. 1, providing a credit surcharge of $(.0048) per therm pursuant to Commission Order No. 18,622 (72 NH PUC 114); and

WHEREAS, on April 29, 1987 Gas Service, Inc. filed the First Revised Page 8 Superseding Original Page 8 of its NHPUC Supplement No. 1, providing a credit surcharge of $(.0014) per therm; and

WHEREAS, on May 15, 1987, Gas Service, Inc. filed the Second Revised Page 8 of its NHPUC Supplement No. 1 providing a credit surcharge of $(.0021) per therm; and

WHEREAS, upon investigation of the foregoing filing, and the documentation in support thereof, the Commission finds the refund of Gas Service, Inc.'s temporary rates and rate case expense is just and reasonable and in compliance with Commission Report and Order No. 18,622, as amended in Order No. 18,633; it is therefore

ORDERED, that Gas Service, Inc.'s Original Page 8 of NHPUC Supplement No. 1, be, and hereby is, rejected; and it is

FURTHER ORDERED, that Gas Service, Inc.'s First Revised Page 8 superseding Original Page 8 of its NHPUC Supplement No. 1, providing a surcharge credit of $(.0014) per therm be, and hereby is, rejected; and it is

FURTHER ORDERED, that Gas Service, Inc.'s Second Revised Page 8 superceding Original Page 8 of its NHPUC Supplement No. 1, providing a surcharge credit of $(.0021) per therm be, and hereby is, accepted, effective for all billsrendered on or after June 1, 1987.

By Order of the Public Utilities Commission of New Hampshire this twenty-seventh day of May, 1987.

==========

NH.PUC*05/28/87*[60233]*72 NH PUC 197*Public Service Company of New Hampshire

[Go to End of 60233]

72 NH PUC 197

Re Public Service Company of New Hampshire

DF 87-83
Supplemental Order No. 18,689

New Hampshire Public Utilities Commission

May 28, 1987

MOTION for rehearing on an electric utility's short-term debt financing authority; denied.

---

1. SECURITY ISSUES, § 98 — Short-term debt — Methods of authorization.

[N.H.] The issuance or renewal of short-term debt may be approved by either of two methods: (1) by a formal rule making, or (2) by a specific order in an individual case. p. 198.

2. ORDERS, § 5 — Validity — Period of effectiveness — Power to modify.

[N.H.] Final orders rendered by the commission remain valid and in effect until they are amended, suspended, annulled, or otherwise modified by a court or the commission, which always has the power to modify its own orders upon following the proper procedures. p. 198.

3. SECURITY ISSUES, § 98 — Short-term debt — Limits — Formula and policy.

[N.H.] Commission policy is to allow a utility a short-term debt limit of up to 10% of the utility's net fixed capital account, as rounded to the next highest $10,000. p. 198.

4. SECURITY ISSUES, § 125 — Suspension of authorization — Passage of time as a factor — Specific versus general authority.

[N.H.] Where an electric utility had issued less than half of the short-term debt financing authorized for it three years previously, under an order providing a general short-term debt directive not limited to a single specific transaction, there was no need to institute a new investigation upon the utility's decision to continue with the issuance, as the general nature of the authorizing order made the order still outstanding and valid, negating the need for formal new authorization. p. 199.

5. ORDERS, § 5 — Validity — Passage of time — Transformation into rule.

[N.H.] The amount of time that a commission order has been outstanding and in effect does not transform the order into a rule; the passage of time does not expand the specific limited applicability of an order into the general applicability of a rule. p. 200.

---

i. SECURITY ISSUES, § 125 — Suspension of authorization — Passage of time as a factor — Changed conditions.

[N.H.] Statement, in a dissenting opinion, that a new investigation into a utility's financing should be initiated when the utility proposes to continue the issuance of short-term debt under a three-year-old authorization order, where the utility was operating under conditions different from those in effect when the authorization order was issued. p. 200.

REPORT REGARDING MOTIONS FOR REHEARING AND MOTION TO REOPEN SHORT TERM FINANCING DOCKETS

By the COMMISSION:

I. Introduction and Procedural History

This Report and Order denies certain motions related to Report and Order No. 18,661 (72 NH PUC 162), issued on May 6, 1987. In that Report and Order, the Commission denied the

Consumer Advocate's request to investigate the intention of Public Service Company of New Hampshire (PSNH) to raise 150 million dollars in short term debt. It also denied, without prejudice, the Consumer Advocate's request that the Commission develop rules pursuant to RSA 541-A on the issuance of debt.

On May 18, 1987, the Consumer Advocate filed a motion to rehear Report and Order No. 18,661 pursuant to RSA 541:3. On the same date the Consumer Advocate also filed a motion to reopen the

consideration of PSNH Short Term Financing in Dockets DF 81-76 and DF 84-168. On May 20, 1987, the Campaign for Ratepayers Rights (CRR) also filed a motion for rehearing of Report and Order 18,661. On May 22, 1987, PSNH filed responses to these Consumer Advocate and CRR motions. In the Report and Order below, the Commission discusses PSNH's authority for short term debt under outstanding Commission orders and denies the Motions.

II. PSNH's Authority

[1] RSA 369:7 provides two methods for the Commission to authorize the issuance or renewal of short term debt: 1) by rules and, 2) by specific order in individual cases. The State Administrative Procedures Act (APA) defines a rule as a:

regulation, standard or other statement of general applicability adopted by an agency to (a) implement, interpret or make specific a statute enforced or administered by the agency or (b) prescribe or interpret an agency policy, procedure or practice requirement binding on persons outside the agency, whether members of the general public or personnel in other agencies.

RSA 541-A:1 (1986 Supp.). The APA requires agencies such as the PUC to follow certain specified procedures in promulgating rules. RSA 541-A:3. (1986 Supp.) In contrast to rulemaking, the APA defines a "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". RSA 541-A:1 (1986 Supp.).

[2] RSA 363:17-b requires the PUC to issue a final order on all matters presented to it. RSA 365:26 provides that a Commission order is effective until it "shall be altered, amended, suspended, annulled, set aside or otherwise modified by the commission or the court." RSA 365:28 provides that the Commission may "alter, amend, annul, set aside, or otherwise modify any order made by it" upon following appropriate procedures.

[3] The most recent PUC order addressing PSNH's authority under RSA 369:7 issued on July 31, 1984 by Order No. 17,139 in docket no. DF 84-164. 69 NH PUC 415, 417, 418, 420 (1984). At the time the petition was filed in Docket No. DF 84-164 PSNH had authority to borrow short term debt in the sum of $190,000,000 by Order No. 14,854 issued in Docket No. DF 81-76 (66 NH PUC 151). Historically the Commission had established a policy that generally allowed a short term debt limit to any utility of up to 10% of a utility's net fixed capital account rounded to the next higher $10,000. See e.g. Docket D-E3142, Re Public Utilities: Short Term Notes, Order No. 5968 33 NH PUC 218 (1951), and Order No. 7446, 42 NH PUC 40 (1960).

In docket no. DF 84-164, PSNH sought approval to add an additional $30,500,000 to its

short term debt limit and to obtain approval to enter into certain restructural agreements with its then creditors. The restructured agreements required PSNH to treat all creditors alike, carry the same interest rate, secure creditors with accounts receivable lease of certain real estate to Consolidated Coal Co. and other items submitted therein. If the Company used its short term debt to cover all of the terms of the restructured agreement, the Company would have incurred a short term debt level of $220,500,000.

Order No. 17,135 issued in docket no. DF 84-168 stated in the section entitled "Commission Analysis" that the Commission's findings were based upon both the specific package of PSNH credit agreements before it and its analysis of each individual approval sought by the company. The Commission found that the authority that the Company was seeking to, among other things, increase the authorized level of short term debt, to be in the public good. Id., 69 NH PUC at 417. With regard to the short term debt, the Commission particularly found that the level of short term debt requested "is reasonable for PSNH given its

size and its critical need for a modicum of financial flexibility." Id., 69 NH PUC at 418. The Commission order noted that the requests before it in that order had their roots in a liquidity crisis that the Company experienced in 1984. Id., 69 NH PUC at 417. The Commission has taken no action since the issuance of that order to modify the short term debt authority provided therein.

III. Motions for Rehearing

The Consumer Advocate and CRR motions assert that the change in circumstances since the issuance of Order No. 17,139 requires the Commission to investigate the short term debt limit, citing Re Easton, 125 N.H. 106 (1984). The Commission notes that, as discussed above, when it set the short term debt limit for PSNH, PSNH faced financial difficulties. The amount of short term debt authorized was found appropriate considering PSNH's size and need for financial flexibility. Under the statutes discussed above, that authority is still good. The Commission has the discretionary authority to reconsider the order on PSNH's short term debt limit. However, the Consumer Advocate has not alleged any facts that convinces the Commission of a need to reconsider PSNH's outstanding authority to incur short term debt. In particular, PSNH's size and need for financial flexibility — critical factors relied upon in developing PSNH's current authority — does not seem changed despite the uncertainty over the operation of Seabrook. In addition, Re Easton, supra, does not impose or even address, any requirement for the Commission to reconsider short term debt authorizations such as PSNH's.

The Consumer Advocate and CRR further allege that the Commission must investigate the PSNH plans under the requirements of RSA 369:7. Looking at that Statute, RSA 369:7 I. provides that the Commission may authorize issuance of short term debt by specific order or rules. RSA 369:7 II. particularly addresses the rulemaking option — an option the Commission has not exercised. Thus, the relevant issue is whether RSA 369:7 I. imposes a duty to reexamine the PSNH short term debt authorization provided by Order No. 17,139.

[4] The Commission believes RSA 369:7 I. would require investigation of PSNH's issuance if the authority provided in 1984 was limited to a specific transaction. However, if the authority

given was for a general short term debt limit not limited to any particular transaction, then the order providing authority for the debt limit still provides a short term debt limit that remains valid today. As is discussed above, the Commission's order authorized the debt limit in light of PSNH's size and need for financial flexibility. As was also discussed above, the Commission did not look at just the instant transaction, but at the specific authority requested. In addition, the specific terms of the Report and Order generally increase the short term debt limit authorized to be outstanding at any one time from 190,000,000 to 220,500,000. That authorization was not tied to or conditioned upon a specific transaction despite the power of the Commission to condition any such authorization.1(67) The amount of short term debt authorized also exceeds the dollar level of the transaction that the order discusses. Based upon all of the above factors, the Commission finds that the Commission set a generally allowed level of short term debt for PSNH by issuing its order. That order is still valid pursuant to RSA 365:26 and may not be changed without following the procedural requirements necessary to comply with RSA 365:28. That order continues to address the legal right, duty or privilege of PSNH to incur short term debt.2(68)

The Consumer Advocate and CRR also assert that the Commission, by not investigating, fails to meet the requirements of Re Easton in protecting the public. The Commission does not agree. The Commission is investigating the Company's non-Seabrook long term financing consistent with Re Easton in docket no. DR 87-4. See Report and Order No. 18,626, Docket No. DR 87-4 (April 3, 1987) (72 NH PUC 157). The

Commission shall investigate the long term Seabrook financing in docket no. DF 87-73 consistent with Re Easton. However, neither Re Easton nor any other legal requirement dictates that the Commission specifically investigate PSNH's short term debt limit at this time, for the outstanding order is valid as discussed, supra. The Commission further declines to exercise its discretion to specifically investigate that now. However, the Company's total financing picture — and the part that short term financing plays in that picture — will unquestionably be reviewed in the process of investigating the long term financings in docket nos. DF 87-4 and DF 87-73.

The Consumer Advocate attacks the authorization for PSNH's short term debt due to the refusal of former PUC Chairman McQuade to disqualify himself from the proceeding. The time for moving for rehearing and appeal of that 1984 order has long passed. The Order is thus valid pursuant to RSA 365:28.

[5] Finally, the CRR Motion argues that allowing the outstanding PSNH authorization to continue in effect despite changing circumstances allows the order to operate as a rule. The Commission has addressed changing circumstances above and refers CRR to that discussion. With regard to the order operating as a rule, the Commission notes that the Order No. 17,139, supra, is an outstanding valid order addressing PSNH only from a proceeding that the Commission decided after a hearing. The order remains valid under RSA 365:28. The length of time that the order has been outstanding does not make it a rule. As the definition of rule quoted above indicates, a rule has general applicability. See also: Re Nationwide Insurance Co., 120 N.H. 90, 93, 94 (1983). The passage of time has not expanded the applicability of Order No.

17,139 to an action of general applicability. Thus, it cannot be considered a rule.

IV. Motion to Reopen Financing Dockets

The Consumer Advocate also requests that the Commission reopen the last two dockets under which PSNH received short term financing docket nos. DF 81-76 and DF 84-168. He bases this request upon the changed financial circumstances of PSNH and former PUC Chairman Paul McQuade's refusal to disqualify himself from docket DF 84-168. The Commission long ago issued final orders in those dockets. These grounds are identical to those of the Consumer Advocate's Motion for Rehearing. The Commission rejects these grounds as a basis for examining the PSNH short term debt authority based upon its discussion of the same grounds for the Motion for Rehearing above. Even if the grounds had merit, the Commission finds that actions on these long closed dockets with perhaps different participants and parties to be an inappropriate way to proceed. Thus, the Commission declines to take any action in these old dockets.

Our Order will issue accordingly.

SUPPLEMENTAL ORDER

Based upon the foregoing Report Regarding Motions for Rehearing and Motion to Reopen Short Term Financing Dockets, which is incorporated herein by reference; the Commission

ORDERS, that the Consumer Advocate's Motion to Rehearing Report and Order No. 18,661 (72 NH PUC 162) is denied; and it is

FURTHER ORDERED, that the Campaign for Ratepayers Rights Motion to Rehear Report and Order No. 18,661 is denied; and it is

FURTHER ORDERED, that the Commission declines to take any action in or reopen dockets DF 81-76 and DF 84-168.

By order of the Public Utilities Commission of New Hampshire this twenty-eighth day of May, 1987.

Dissenting Opinion of Commissioner Aeschliman

[i] I would grant the Motions for

Rehearing of the Consumer Advocate and the Campaign for Ratepayers Rights based upon the reasoning in my dissenting opinion issued on May 6, 1987 from the Commission's Report and Order No. 18,661.

At a minimum, the Commission, in the exercise of its discretion, should be reviewing the entirety of the Company's financing plans at this time due to the current circumstances of the Company. In addition, the authorization for financing provided by Order No. 17,139, July 1984 (69 NH PUC 415) involved a set of circumstances which is very different from those facing the Commission today. Thus, both reasonable discretionary Commission action and a reasonable reading of the Commission's Order No. 17,139 dictate the same result — that an investigation of the Company's short term financing plans is appropriate. The fact that the Company has

completed a short term financing subsequent to the Commission's Order of May 6 does not render this issue moot. The Commission is informed that the financing totaled $100 million and the financing authority in question totals $220 million.

As I indicated in my prior dissent, I believe the appropriate action is to investigate the short term financing plans and authority in conjunction with the long term financing request in docket DF 87-4. This course of action would enable the Commission to approve short-term financing sufficient to maintain the Company's solvency during the proceeding if evidence relative to the Company's cash situation warranted such approval.

To the extent that the Consumer Advocate and the Campaign for Ratepayers Rights are asserting that an Easton review must be completed before any financing can be approved, I would disagree with their position. The Court has clearly indicated that financing can be approved pending an appropriate Easton review when the continued existence of the Company is immediately threatened. Re Seacoast Anti-Pollution League, 125 N.H. 465, 475, 482, A.2d 509 (1984) and Re Seacoast Anti-Pollution League, 125 N.H. 708, 714, 482 A.2d 1196 (1984). Under such circumstances the Court affirmed approval of long term debt. Clearly short term debt authorization under such circumstances would be appropriate.

If the Commission had held a hearing to review the cash situation of the Company and had authorized short term financing based upon findings that the cash situation of the Company required prompt action pending an appropriate Easton review I would have concurred. I can not agree that authorization for $220 million in short term debt and authorization of $220 million in long term debt are routine matters given the financial condition of the Company.

FOOTNOTES

[1]The Commission may impose reasonable conditions upon authorizations of financings. See Re Public Service Co. of New Hampshire, 122 N.H. 1062, 1072, 51 PUR4th 298, 454 A.2d 435 (1982).

[2]The CRR Motion also argues that the PSNH authority was based upon a specific transaction. Thus, the above discussion also addresses that CRR argument.

==========

NH.PUC*05/29/87*[60234]*72 NH PUC 201*Automatic Dialing Announcing Devices

[Go to End of 60234]

72 NH PUC 201

Re Automatic Dialing Announcing Devices

DE 87-43
Order No. 18,690

New Hampshire Public Utilities Commission

May 29, 1987

ORDER accepting a stipulation establishing a procedural schedule and designating issues to be addressed in an investigation of automatic dialing announcing devices.

SERVICE, § 436 — Telephone — Equipment and facilities — Automatic dialing and announcing devices — Procedural schedule — Designation of issues.

Page 201

[N.H.] The commission accepted a stipulation establishing a procedural schedule and designating the issues to be addressed in an investigation of automatic dialing announcing devices.

By the COMMISSION:

ORDER

WHEREAS, by Order of Notice dated March 23, 1987, the Commission scheduled a prehearing conference in docket DE 87-43 to determine the scope of and to produce a procedural schedule for an investigation of the need for automatic dialing announcing devices (ADADs) tariff and the terms and conditions to be contained in said tariffs for each New Hampshire franchised telephone utility (collectively referred to herein after as "companies"); and

WHEREAS, at said prehearing conference the parties stipulated to the following procedural schedule:

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

July 25, 1987 Staff prefiled testimony due

 August 7, 1987 Companies' data requests due
     regarding staff's prefiled
     testimony

 August 21, 1987 Staff responses to companies'
     data requests due

 September 11, 1987 Legal memoranda to be filed by
     companies

 September 25, 1987 Companies, testimony due

 October 9, 1987 Staff data requests regarding
     companies' prefiled testimony

 October 23, 1987 Companies' responses to staff
     data requests

 November 13, 1987 Legal memorandum from staff
```

and

WHEREAS, the parties further stipulated that the factual issues to be addressed in this proceeding should include, but not necessarily be limited to, the following:

A. the nature of ADAD calls at issue, including whether or not a problem exists which should be addressed,

B. the possible solutions,

C. a cost/benefit analysis of possible solutions,

D. where to impose the burden of the solution and

E. the rate structure implications

and

WHEREAS, the parties further stipulated that the legal issues to be addressed during these proceedings should include, but not necessarily be limited to, the following:

1. customer privacy rights,

2. ADAD user free speech rights,

3. state authority over ADAD issues,

4. restraint of trade,

5. discrimination among types of customers, and

6. Other issues identified in correspondence marked for identification in these proceedings as exhibits 1, 2. and 3. all of which are herein incorporated by reference; and

WHEREAS, at the request of the parties, staff agreed to provide each of the companies with a copy of any written memoranda in the Commission records of verbal consumer complaints filed with the Commission or its staff; and

WHEREAS, the parties agreed that said written memoranda of verbal consumer complaints that will be provided will not include the names, addresses or phone numbers of the consumer complainants; and

WHEREAS, the procedural schedule and stipulations of the parties appear to be reasonable; it is

ORDERED, that the procedural schedule and, with out limitation, the issues stipulated to by the parties are hereby accepted by the Commission; and it is

FURTHER ORDERED, that unless otherwise ordered the hearings on the issues before the Commission in this docket will be held on December 1 and 2, 1987 commencing on each day at 10 a.m. at the Commission offices.

By order of the Public Utilities Commission of New Hampshire this twenty-ninth day of May, 1987.

==========

72 NH PUC 203

Re Southern New Hampshire Water Company, Inc.

DE 86-230
Order No. 18,691

New Hampshire Public Utilities Commission

May 29, 1987

PETITION by water utility for certificate authority to provide service in previously unfranchised area; denied.

---

1. PUBLIC UTILITIES, § 57 — Public utility status — Municipal utilities — Extraterritorial service.

[N.H.] To the extent that a municipal utility operates outside of its corporate boundaries, it is a public utility. p. 205.

2. CERTIFICATES, § 88 — Grant or refusal — Factors — Public interest.

[N.H.] Before being authorized to provide water service to the public, an entity must prove (1) public need or interest in the service, and (2) the ability to abide by all service requirements imposed by state pollution control and water resource agencies. p. 206.

3. CERTIFICATES, § 76 — Grant or refusal — Factors — Compliance with pollution and resource standards.

[N.H.] Although a water utility was not granted certificate authority to expand into previously unfranchised territory because of the utility's inability to prove compliance with state pollution control and water resource standards, the commission said that upon proof of compliance, the utility should be so certified as to undisputed territories which were already surrounded as territorial "islands" by the utility's other certificated areas. p. 207.

4. CERTIFICATES, § 90 — Disputed territory — Rival applicants — Need for hearings.

[N.H.] Where previously unfranchised service territories were the subject of a dispute between two water utilities, one of which had petitioned

Page 203

for certificate authority and one of which had declined to petition for such but which had been requested to provide service, the commission determined that hearings were necessary to settle the dispute and to assure that no unnecessary duplication of facilities or economic waste would occur. p. 207.

APPEARANCES: Dom S. D'Ambruoso on behalf of Southern New Hampshire Water Company,

Inc., Anthony F. Simon on behalf of Manchester Water Works; and Daniel J. Kalinski on behalf of the Commission Staff.

By the COMMISSION:

REPORT

I. INTRODUCTION AND SUMMARY

This Report and Order denies the petition of Southern New Hampshire Water Company, Inc. (Southern) to serve all unfranchised areas of Londonderry. The Report indicates that the Commission shall expeditiously authorize Southern to serve the undisputed portion of the territory petitioned for upon the filing of testimony under affidavit or otherwise sufficient evidentiary materials to show compliance with RSA 374:22 III (1986 Supp.) The Report further determines that additional hearings be scheduled as to the disputed portion of the area petitioned for and to further discuss the terms and conditions set forth in the Memorandum of Understanding between Manchester Water Works and Southern.

II. PROCEDURAL HISTORY

On August 11, 1986, Southern filed a petition seeking authority to establish a water utility in all currently unfranchised areas of the Town of Londonderry, New Hampshire. An Order of Notice was issued on August 27, 1986 scheduling a hearing for October 16, 1986. On October 10, 1986, MWW filed a Motion to Intervene. On October 16, 1986, Southern filed an Objection to Motion to Intervene citing MWW's failure to meet the statutory requirements of RSA 541-A:17 governing interventions in proceedings of this kind.

The Commission held a hearing in this matter on October 16, 1986. At the hearing the Commission granted MWW's Motion to Intervene. During the hearing Paul F. Noran, Vice President of Consumers Water Company, and Stewart L. McCormack of Home Plate Corporation presented testimony on behalf of Southern. Thomas Bowen, the Distribution Engineer for Manchester offered testimony on behalf of MWW. After the hearing, the MWW and Southern filed briefs or memoranda arguing the case. On January 14, 1987, MWW and Southern filed a Memorandum of Understanding along with a joint cover letter, the contents of which are discussed, infra.

III. PETITION TO ESTABLISH A WATER UTILITY — AREAS REQUESTED AND CONTESTED

By its petition, Southern seeks authority pursuant to Section 374:22 N.H. Rev. Stat. Ann. to establish a public utility to provide water service to all currently unfranchised areas of the Town of Londonderry, New Hampshire. The area constitutes one contiguous area that surrounds some relatively small territories or "islands"[1(69)] that are currently franchised to Southern or MWW. Nevertheless, the area is described below in three parts to enable a more accurate and readable description of its boundaries. The most westerly part of the area sought by Southern is that area of Londonderry bounded on the east by Interstate Route 93 (I-93); on the west by the Litchfield-Londonderry town line; on the north by the franchise boundary of MWW granted in docket I-E14495 and Order No. 14,390, (65 NH PUC 359), and on the south by the franchise boundary of Southern granted in docket DE 83-221 and Order No. 16,616 (68 NH PUC 526). This most westerly

portion of the area petitioned surrounds island type areas already granted to Southern in docket DE 85-354 and Order No. 18,010 (70 NH PUC 1070). Southern also seeks the area east of I-93 bounded in the west by I-93; in the north by certain areas granted to MWW in dockets DE 85-45 and DE 86-86 and Order Nos. 17,493 (70 NH PUC 107) and 18,180 (71 NH PUC 187), and by Route 28; in the west by the Londonderry-Derry town line, and in the south by the northern border of a franchise area granted to Southern in docket DE 83-221, Order No. 16,616.

The areas that MWW contests are described in two parts as follows. The more northerly contested portion is bound on the north and west by existing MWW service area; on the south by Stonehenge Road; and on the east by Route 28. The more southerly portion of the contested area is bound on the north by Stonehenge Road, by MWW service territory granted in DE 86-86, Order No. 18,180, and by Route 28; on the east by the Londonderry Town line; on the south by the existing franchise territory of Southern granted in docket DE 83-221, Order No. 16,616; and on the west by I-93.[2](70)

III. FINDINGS OF FACT

[1] Southern is a New Hampshire Corporation and a public utility as defined in RSA 362:2 and 362:4 that furnishes water for the public. MWW is a municipal corporation that furnishes water for the public. To the extent MWW engages in such activities outside the boundaries of the City of Manchester, it is a public utility as defined in RSA 362:2 and 362:4.

Southern's petition is the only petition before the Commission for a certificate to serve the area petitioned for. MWW received requests to provide water service in the area, but refused to petition for a franchise. Testimony from MWW indicates its reluctance to provide service to the area is based upon its desire for the Commission to approve a Merrimack River water source development charge. At the time of the hearing, MWW had a temporary moratorium on expanding its franchise area. The moratorium was evidenced by an excerpt from the minutes of the MWW Board of Water Commissioners. However, the record is void of evidence of the MWW Commissioner's intent to pursue the disputed area upon approval of the source development charge.[3](71)

Southern anticipates that in the long run it would supply the petitioned for area with water from a water treatment plant in Litchfield, but may also purchase water from Pennichuck Water Company or MWW. Long range plans for service to the area would also involve substantial construction of water mains. In the short term, developments would be served by satellite type systems as ground water availability allows. Southern would extend the regional system water mains as such extension becomes economically justified. Southern currently has three island or satellite systems that it currently serves with ground water within the undisputed portion of the proposed area. Southern anticipates that it would also bring these systems into the regional system via economic expansion of mains.

Within the more southerly portion of the contested area there was a proposed residential development of 75 homes that at the time of the hearing had an immediate need for service. Southern plans to serve this development—the "Home Plate Development" (Home Plate)—by

purchasing water from Derry and constructing a 2100 foot 12 inch transmission line. The line would cost approximately $115,000. Southern testified that it anticipates a contribution toward $90,000 the total amount from the developer, but admitted that there was not yet a firm deal.[4](72)

MWW has the technical ability to serve the Home Plate development without constructing a transmission line. Such service could technically come from existing 24 inch and 30 inch water mains that follow Route 28 and carry water from MWW to the Town of Derry. The record reflects that these lines were designed to carry flows in

Page 205

excess of 10 million gallons per day, but that the system behind those lines will currently only provide 2.1 million gallons per day. Derry's original projections indicated that the 10 million gallon per day capacity would be necessary at some future date within their 25 year design period. The record also reflects that both Derry and Londonderry contributed toward the construction of this line.

At the time of the hearing, the Town of Londonderry supported the Southern petition in its entirety. There are outstanding disputes between MWW and the Town of Londonderry regarding MWW's operations in Londonderry. Provision of service to the Home Plate development would require a $50,000 booster station regardless of whether MWW or Southern serves the development.

IV. THE MEMORANDUM OF UNDERSTANDING

The Memorandum of Understanding dated January 9, 1987 provided for a series of interrelated actions by Southern and MWW and is contingent upon the Commission's approval of MWW's proposed source development charge under which MWW can, "to [MWW's] satisfaction," adequately fund the development of the Merrimack River as a supplemental source of water supply. Under the agreement, Southern would withdraw its petition for the contested areas and MWW would offer Southern the opportunity to enter into a ten year contract under which Manchester would supply Southern with the following volumes of water:

Average Daily Flow — 2.1 million gallons per day (MGD)

Maximum Daily Flow — 3.5 million gallons per day (MGD)

Peak Hourly Flow — 218,750 gallons per hour.

The agreement further specifies various aspects of this potential contract and deals with the specifics of plant necessary to carry out the contract.

V. COMMISSION ANALYSIS AND CONCLUSIONS

A. Commission Authority

[2] Under New Hampshire statutes, no person or entity may provide water service to the public or commence construction of plant to provide such service unless it has obtained Commission approval to provide such service. RSA 374:22. The Commission must make two findings prior to granting the approval via franchise certificate or otherwise to provide water service and take needed related actions. First, the Commission must find that such permission is in the public interest. RSA 374:26. Second, it must find that it should satisfy any requirements of

the Water Supply and Pollution Control Commission and the Water Resources Board with regard to the suitability and availability of water for the applicants proposed water utility. RSA (1986 supp.) 374:22. RSA 374:26 indicates that Commission approval may be given without a hearing.

B. Rejection of Memorandum of Understanding

The Memorandum of Understanding was, at the time it was written, tied to the resolution of the Source Development Charge considered in docket No. DE 86-80 by requiring that the Commission authorize charges to MWW's "satisfaction". Presumably, MWW's satisfaction applies to both the present and the indefinite future. Such a standard is unworkably vague and constitutes an attempt to restrict current and future Commissions in their actions on the funding of the Merrimack River source development. For these reasons, the Commission finds the Memorandum of Understanding does not constitute a viable resolution of the case and rejects it.

Page 206

C. Compliance With RSA 374:22 (III)

[3] The Commission is unable to find adequate evidence that clearly shows that Southern will comply with the requirements of the Water Supply and Pollution Control Commission and the Water Resources Board concerning the suitability and availability of water for the applicant's proposed water utility. Under the New Hampshire Statutes described above, compliance with such requirements is prerequisite to approving new utility service. The Commission will, however, allow Southern to remedy this problem via filing such information under affidavit or other sufficient evidentiary material. The Commission anticipates that a hearing may not be necessary to deal with this matter and anticipates expeditious action upon the filing of the additional information.

D. The Undisputed Area

If Southern can comply with RSA 374:22 III (1986 Supp.), the Commission finds that awarding Southern the area that they have petitioned for and which MWW does not dispute is in the public interest. Under the findings of facts above, Southern seems to have plans to serve the area in an economic manner. The territory borders on other Southern service territory and surrounds other Southern service territories that are currently islands. Southern seems to be planning to provide service under its tariffs to developments upon demand except where ground water is unavailable. Thus, if the Commission eventually finds that Southern complies with RSA 374:22 III (1986 Supp.), the Commission shall authorize Southern to serve this undisputed territory under the tariffs that currently apply to its other service in Londonderry.

E. The Disputed Territory

[4] In Section B, supra, the Commission rejected the Memorandum of Understanding presented to the Commission and will conduct additional hearings in the docket to discuss the Memorandum of Understanding in an attempt to resolve service to the disputed area, avoidance of economic waste by duplication of current facilities and future facilities, fixing of proper rates and tariffs for wholesale purchases of water for contracts for limited periods of service including a proper allocation for a source development fee.

The purpose of the additional hearings is to achieve results in the efficient use of resources in

providing water service. In this regard the Commission invites inter-company cooperation with the goal of providing economic and fair provisions for service to ratepayers.

Our Order will issue accordingly.

ORDER

Upon consideration of the foregoing Report, which is incorporated herein by reference, the Commission

ORDERS, that Southern New Hampshire Water Company, Inc. shall be denied authorization to serve the petition for area; and it is

FURTHER ORDERED, that Southern New Hampshire Water Company, Inc. shall be authorized to serve the area referred to in the foregoing Report as the undisputed area upon the filing of sufficient evidentiary materials to show compliance with RSA 374:22 III (1986 Supp.); and it is

FURTHER ORDERED, that a hearing shall be fixed and scheduled for the eighth day of June, 1987 at ten o'clock in the forenoon at the offices of the Commission for the purposes described in the foregoing Report; and it is

FURTHER ORDERED, that Southern New Hampshire Water Company, Inc. shall file materials relating to compliance with RSA 374:22 III (1986 Supp.) within 45 days of the date of this Order.

By order of the Public Utilities Commission of New Hampshire this twenty-ninth day of May, 1987;

FOOTNOTES

[1]For purposes of this discussion an island is an area already franchised which is generally surrounded by the proposed franchise territory.

[2]The Commission notes that Exhibits 2 and 10 in this docket accurately depict the areas requested and contested to the extent each shows them.

[3]On April 6, 1987, the Commission approved a source development charge for MWW. Docket No. DR 86-80, Order No. 18,628 (72 NH PUC 138).

[4]The Commission notes that since the hearing Spring Hills Water Co. has petitioned to serve the Home Plate development as a water utility. Docket No. DE 87-10.

==========

NH.PUC*05/29/87*[60236]*72 NH PUC 208*Concord Natural Gas Corporation

[Go to End of 60236]

Re Concord Natural Gas Corporation

DR 86-292
Order No. 18,692

New Hampshire Public Utilities Commission

May 29, 1987

ORDER rejecting proposed discount rate offering for employees of a natural gas distribution utility.

DISCRIMINATION, § 55 — Concessions to particular classes or persons — Employees of utility — Natural gas distribution utility.

[N.H.] The commission believes that employee discount rates give improper price signals; accordingly, that portion of the tariff filing of a natural gas distribution utility that would allow utility employees to receive discounts on their gas purchases was rejected.

By the COMMISSION:

ORDER

WHEREAS, Concord Natural Gas Corporation submitted a proposed original page No. 26 to Gas Tariff NHPUC No. 13 which will allow Corporation employees to receive discounts on their gas purchases; and

WHEREAS, the Commission believes that employee discount rates give improper price signals (see Re Concord Electric Co., Docket No. DR 84-239, Report and Order No. 17,767, 70 NH PUC 665 [1985]); it is hereby

ORDERED, that Concord Natural Gas Corporation original page 26 be, and hereby is, rejected.

By order of the Public Utilities Commission of New Hampshire this twenty-ninth day of May, 1987.

==========

NH.PUC*06/02/87*[60237]*72 NH PUC 208*Cathedral Ledge Water System

[Go to End of 60237]

72 NH PUC 208

Re Cathedral Ledge Water System

DE 86-277
Order No. 18,693

New Hampshire Public Utilities Commission

June 2, 1987

ORDER nisi exempting a water system from the provisions of public utility statutes.

---

1. PUBLIC UTILITIES, § 121 — Water — Nonprofit member-owned system.

[N.H.] A non-profit water system owned by and providing service only to its members/owners is not a public utility. p. 209.

2. PUBLIC UTILITIES, § 121 — Water — Member-owned system — Effect of service to non-member customers.

[N.H.] A water system that served 55 customers, fifty of whom were members/owners, was exempted from regulation; state statute RSA 363:4 allows the commission to exempt water systems serving less than 10 customers from the provisions of public utility statutes. p. 209.

Page 208

By the COMMISSION:

ORDER

[1, 2] WHEREAS, Sanctuary Homeowners Assoc., Inc. (Sanctuary) by letter filed on May 4, 1987, seeks exemption from regulation of its water system under utility statutes, pursuant to the provisions of RSA 362:4; and

WHEREAS, the water system owned by Sanctuary serves 55 customers at an area known as Cathedral Ledge Development in the Town of Conway, N.H.; and

WHEREAS, a non-profit water system owned by and providing service only to its members-owners is not a public utility Re Solar Village, 68 NH PUC 605 (1983); and

WHEREAS, 50 of the 55 customers served by Sanctuary's water system are members of Sanctuary, and

WHEREAS, in accordance with the provisions of RSA 362:4 a water system serving less than 10 customers may be granted exemption from regulation; 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 of or in opposition to the petition; it is hereby

ORDERED, that all persons interested in responding to the petition be notified that they may submit written comments or a written request for a hearing in this matter no later than June 17, 1987; and it is

FURTHER ORDERED, that Sanctuary, 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 conducted, such publication to be no later than June 10, 1987 and documented by affidavit to be made on a copy of this Order and filed with this office and that individual notice be given to each customer; and it is

FURTHER ORDERED, NISI, that Sanctuary be authorized pursuant to RSA 362:4, to be exempt from any and all provisions of this title; and it is

FURTHER ORDERED, that such authority shall be effective on June 22, 1987 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 second day of June, 1987.

==========

NH.PUC*06/02/87*[60238]*72 NH PUC 209*New England Telephone and Telegraph Company

[Go to End of 60238]

72 NH PUC 209

Re New England Telephone and Telegraph Company

DE 87-97
Order No. 18,694

New Hampshire Public Utilities Commission

June 2, 1987

ORDER nisi granting a telephone company a license to place and maintain telephone plant on state-owned property.

CERTIFICATES, § 123 — Telephone — Placement of plant on state-owned land.

[N.H.] A telephone company was granted a license to place and maintain telephone plant on state-owned property; the commission found that the proposed plant would provide the company with added capability to meet its franchise obligations and would be in the public interest; the license was conditioned upon (1) the public having an opportunity to express its support or opposition, and (2) all construction meeting the requirements of the National Electrical Safety Code.

By the COMMISSION:

ORDER

WHEREAS, on May 20, 1987, New England Telephone & Telegraph Company (NET) filed with this Commission a petition under RSA 371:17 seeking license to

place and maintain telephone plant on property owned by the State of New Hampshire at the northwest corner of the intersection of Route 3A and West Shore Road; and

WHEREAS, such plant comprises a crossconnect cabinet and two repeater cabinets mounted on a 5' x 13' concrete pad; and

WHEREAS, the Commission finds such facilities provide NET with added capability to meet its franchise obligations in the Bristol Exchange and is in the public interest; and

WHEREAS, the Commission also finds that the public good requires that the public be given the opportunity to express its support or opposition to the petition; it is

ORDERED, that all interested parties be notified that they may submit their comments or file a written request for hearing on the matter before the Commission no later than June 17, 1987; and it is

FURTHER ORDERED, that NET effect such notification by one-time publication of this order in the Evening Citizen, such publication to be no later than June 10, 1987 and designated in an affidavit made on a copy of this order and filed with this Commission; and it is

FURTHER ORDERED, NISI that NET be, and hereby is authorized, pursuant to RSA 371:17 et seq, to place and maintain telephone plant on State-owned land at the northwest corner of the intersection of Route 3A and West Shore Road in Bristol, New Hampshire according to Drawing NET 2, dated March 25, 1987, on file with this Commission; and it is

FURTHER ORDERED, that all construction meet the requirements of the National Electrical Safety Code; and it is

FURTHER ORDERED, that such authority shall be effective 20 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 second day of June, 1987.

==========

NH.PUC*06/02/87*[60239]*72 NH PUC 210*Merrimack County Telephone Company

[Go to End of 60239]

72 NH PUC 210

Re Merrimack County Telephone Company

DE 86-91
Order No. 18,695

New Hampshire Public Utilities Commission

June 2, 1987

ORDER approving a service contract between a telephone company and its subsidiary.

INTERCORPORATE RELATIONS, § 15 — Affiliate interests — Service contract with whollyowned subsidiary — Factors affecting approval — Telephone utility.

[N.H.] A service contract between a telephone utility and its wholly-owned subsidiary was approved where the contract established a standard for payment that was fully compensatory and that did not offer more favorable terms to the subsidiary than are offered to other contractees for service; approval was conditioned on the telephone utility (1) furnishing the commission with detailed financial statements of both the utility and its subsidiary, including statements concerning intercompany transactions, and (2) agreeing to perform all telephone utility obligations before performing services under the service contract; the latter condition was subject to the commission's oversight authority under RSA § 366.6, which permits the commission to apply to the superior court for an order requiring a utility to cease an activity connected with a contract that "substantially threatens or impairs the ability of the public utility to render adequate service at reasonable rates or otherwise to discharge its duty to the public."

By the COMMISSION:

ORDER

WHEREAS, Merrimack County Telephone Company, Inc. (hereinafter Company) on March 12, 1986 filed a service contract evidencing an agreement of the Company to exchange with MCT

Communications, Inc. (hereinafter MCT) its services for compensation; and

WHEREAS, Merrimack County Telephone Company, on March 12, 1986, filed a Note and Agreement for the repayment of $233,000 of outstanding advances to MCT Communications which provide that the note shall be payable over a period not to exceed eight years with interest at the rate of ten percent per annum; and

WHEREAS, the service contract establishes a standard for payment which is fully compensatory and which does not offer more favorable terms to the wholly-owned subsidiary MCT Communications than it offers to other contractees for service; it is hereby

ORDERED, that the above mentioned contract, note, and agreement be; and hereby are; approved subject to the following conditions:

1. the Commission shall have access, as it deems necessary, to the books and records of MCT Communications. Such books and records shall be produced within this state upon request by the

Commission, its employees or its agents. Requests for production made by the Commission's employees or agents are deemed presumptively valid, material and relevant. Any objections to such requests shall be timely raised by Merrimack County Telephone or MCT Communications before the Commission. In making such an objection, respondents shall demonstrate that the request is not reasonably related to any issue properly before the Commission and, further, is not reasonably calculated to result in the discovery of admissible evidence in the proceeding;

2. Merrimack County Telephone Company shall furnish the Commission with:

a) the annual financial statement of MCT Communications and the annual consolidated balance sheets of Merrimack County Telephone Co. and MCT Communications,

b) annual statements concerning the nature of intercompany transactions concerning Merrimack County Telephone Co. and a description of the basis upon which cost allocations and transfer pricing have been established in these transactions

c) the balance sheet(s) of the nonconsolidated subsidiary;

3. Within ninety (90) days following the close of its fiscal year, Merrimack County Telephone Co. shall provide the Commission with a detailed statement of (a) the projected capital budgets of Merrimack County Telephone Co. and MCT Communications for the current year and each of the next two years including estimated financing requirements and construction plans, and (b) sources of capital to be used in funding said capital budgets for the current year;

4. Merrimack County Telephone Co. shall perform their obligations on behalf of the telephone company before performing services under the service contract. This requirement is subject to the Commission's oversight authority under N.H. RSA §366.6 to apply to the superior court for an order requiring a utility to cease an activity connected with a contract, arrangement, purchase, or sale which "substantially threatens or impairs the ability of the public utility to render adequate service at reasonable rates or otherwise to discharge its duty to the public";

and it is

FURTHER ORDERED, that the Company's determination that 10% is a fair interest rate for purposes of the said note will be considered in the next investigation of the Company's rate of return; and it is

FURTHER ORDERED, that for accounting purposes, the Company will book the note as other than a current asset, since there are no principal payments required by the note for eight years, since the payee

is a wholly-owned entity, and since, by the Company's admission, MCT will not be able to make any payments until at least year four of the note.

By Order of the Public Utilities Commission of New Hampshire this second day of June, 1987.

==========

72 NH PUC 212

Re Southern New Hampshire Water Company, Inc.

DE 87-87
Order No. 18,696

New Hampshire Public Utilities Commission

June 2, 1987

ORDER nisi permitting the establishment of a water utility.

SERVICE, § 210 — Water — Establishment of a utility — New territory.

[N.H.] A water utility was authorized to operate as a water public utility in an area where no other water utility had franchise rights; the utility had purchased the water system serving the area and had been providing service at no charge.

By the COMMISSION:

ORDER

WHEREAS, Southern New Hampshire Water Company, Inc. (Southern N.H.), a water public utility operating under the jurisdiction of this Commission, by a petition filed on May 8, 1987, seeks authority under RSA 374:22 and 26 as amended, to establish a water utility in the Town of Hooksett; and

WHEREAS, no other water utility has franchise rights in the area sought; and

WHEREAS, Southern N.H. purchased the water system on May 6, 1986 and has been providing water service at no charge; and

WHEREAS, after investigation and consideration, the Commission is satisfied that the granting of this 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 in this matter no later than June 17, 1987; and it is

FURTHER ORDERED, that Southern N.H., 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 June 10, 1987, and designated in an affidavit to be made on a copy of this Order and filed with this office and that individual notice be given to each customer in the area proposed to be served; and

FURTHER ORDERED, NISI, that Southern N.H. be authorized pursuant to RSA 374:22, to operate as a water public utility in a limited area of the Town of Hooksett; described as follows:

A certain tract or parcel of land, on the easterly side of Joanne Drive in a subdivision known as Smyth Woods and being more particularly described as follows:

Beginning at a point on the easterly line of Joanne Drive, which point is the Southeasterly corner of the within described premises, and is also the northeast corner of lot No. 43-22-9, as shown on a plan hereinafter referred to:

Thence, North 76 -25"-31" West, two hundred eighty-eight and eighty-one one hundredths feet (288.81") to an iron pipe;

Page 212

Thence, North 51 -18' six hundred one and forty-two hundredths feet (601.42') to an iron pipe;

Thence, S 60 -04' -32" E, four hundred and twenty-one and sixty one hundredths feet (421.61') to a concrete bound to be set;

Thence, S 11 -32'-00" W, along the easterly line of Joanne Drive, four hundred sixty-eight, and twenty-seven one hundredths feet (468.27') to the point of beginning.

FURTHER ORDERED, that such authority shall be contingent upon the filing of a statement from the Town of Hooksett that they have no objection to Southern N.H. providing water service in the area sought.

By order of the Public Utilities Commission of New Hampshire this second day of June, 1987.

==========

NH.PUC*06/02/87*[60241]*72 NH PUC 213*Generic Gas Investigation

[Go to End of 60241]

72 NH PUC 213

Re Generic Gas Investigation

Respondent: Claremont Gas Light Company, Inc.

DE 86-208
Supplemental Order No. 18,697

New Hampshire Public Utilities Commission

June 2, 1987

ORDER accepting a stipulation agreement reflecting the conclusion that a natural gas distribution utility should not be required to submit a marginal cost of service study when requesting rate relief.

RATES, § 143 — Cost of service — Marginal cost study — Natural gas distribution utility.

[N.H.] The commission accepted a stipulation agreement reflecting the conclusion that a natural gas distribution utility with a relatively static distribution system and stable customer base and level of demand should not be required to submit a marginal cost of service study when requesting rate relief; it was found that requiring a marginal cost study would not significantly add to the information that could be obtained from a fully allocated embedded cost study and would be costly to perform relative to the number of customers served by the utility.

By the COMMISSION:

SUPPLEMENTAL ORDER

WHEREAS, by Order of Notice dated July 14, 1986 the Commission opened an investigation into questions of rate design and the role of marginal cost methodologies for gas companies to assess, inter alia, "whether marginal cost of service studies should be required of all gas companies requesting rate relief"; and

WHEREAS, the parties held consultative discussions on September 12, October 10 and 24, November 21, 1986, January 9, February 6 and 13, and March 6 and 27, 1987; and

WHEREAS, on January 29, 1987 Claremont Gas Light Company, Inc. (Claremont) presented a memorandum in opposition to requiring Claremont to perform a marginal cost study; and

WHEREAS, following discussions, a Stipulation was reached between the Public Utilities Commission Staff (Staff) and Claremont and submitted to the Commission by Staff on May 22, 1987, which agreed that a marginal cost of service study should not be required of Claremont when requesting rate relief; and

WHEREAS, the Stipulation reflects the conclusion of the parties that given Claremont's relatively static distribution system and stable customer base and level of demand, a marginal cost study including reconciliation would not add significant information to that obtained from a fully allocated embedded cost study, and is costly to

perform relative to the number of customers served by Claremont; and

WHEREAS, after review and consideration, it is the Commission's judgment that the Stipulation Agreement is consistent with the public good; it is hereby

ORDERED, that the Stipulation Agreement is accepted and marginal cost of service studies shall not be required of Claremont so long as its customer base and distribution system remain static, or until further order of this Commission.

By order of the Public Utilities Commission of New Hampshire this second day of June,

1987.

==========

[Go to End of 60242]

72 NH PUC 214

Re Manchester Gas Company

DR 87-68
Order No. 18,700

New Hampshire Public Utilities Commission

June 5, 1987

ORDER nisi authorizing a gas utility to expand its service territory.

SERVICE, § 199 — Extensions — Gas utility.

[N.H.] A gas utility was authorized to extend service into an area served by its sister company where the sister company had no objection to the service extension; the authorization was conditioned on interested parties having an opportunity to request a hearing on the extension.

By the COMMISSION:

ORDER

WHEREAS, on April 7, 1987 Manchester Gas Company submitted a revision to its currently effective Tariff NHPUC No. 13 — Gas and explanatory maps, which would enable Manchester Gas Company to serve part of the town of Merrimack: and

WHEREAS, the town of Merrimack is currently served by Manchester's sister Company, Gas Service, Inc. and

Whereas on May 13, 1987, the Commission issued order 18,670 suspending the proposed tariff revision pending further investigation and

WHEREAS, on May 15, 1987, the Commission received a letter from Gas Service, Inc. stating that Gas Service, Inc. had no objection to the Commission approving Manchester Gas Company's petition; it is

ORDERED that all persons interested in responding to this petition be notified that they may submit comments or file a written request for a hearing on the matter before this Commission no later than July 10, 1987; and it is

FURTHER ORDERED, that Manchester Gas Company effect said notification by publication of this order once in 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 June 26, 1987 and designated in an affida- vit to be made on a copy of this order and filed with this office; and it is

FURTHER ORDERED, NISI, that Manchester Gas Company be authorized, to operate and maintain gas transportation and distribution facilities as specified in first revised page 2 to section 1 of Manchester Gas Company's tariff no. 13; 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 fifth day of June, 1987.

==========

NH.PUC*06/08/87*[60244]*72 NH PUC 216*Evans Group, Inc.

[Go to End of 60244]

72 NH PUC 216

Re Evans Group, Inc.

DE 87-69
Order No. 18,702

New Hampshire Public Utilities Commission

June 8, 1987

ORDER granting permission to install customerowned, coin-operated telephones.

SERVICE, § 456 — Customer-owned, coin-operated telephones — Conditions on installation.

[N.H.] A company was certified as a public utility for the limited purpose of providing public pay telephone service on specified premises where it was found to be in the public interest, and where the company agreed to meet certain commission-imposed conditions.

By the COMMISSION:

ORDER

WHEREAS, on April 3, 1987 Evans Group, Inc. filed a petition to install coin-operated telephones at Evans Fuel Marts, Exit 16, Interstate 89 in Enfield, New Hampshire and Route 4 in Lebanon, New Hampshire; and

WHEREAS, the Federal Communications Commission Registration number for both instruments has been filed with this Commission; and

WHEREAS, in Re Coin Operated Telephone Policies, DE 84-174, DE 84-159, DE 84-152, Order No. 17,486, 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 Evans Group, Inc. dba Evans Fuel Mart in Lebanon, New Hampshire and Enfield, New Hampshire are certified, pursuant to N.H. Rev. Stat. Ann. § 374:22 (1984), as a public utility for the limited purpose of providing public pay

Page 216

telephone service on the specified 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 hearing-aid 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 toll-free calling within municipalities,

9. Evans Group, Inc. 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. Evans Group, Inc. 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 June, 1987.

==========

NH.PUC*06/08/87*[60246]*72 NH PUC 218*David S. Weeks, d/b/a Weeks Restaurant

[Go to End of 60246]

72 NH PUC 218

Re David S. Weeks, d/b/a Weeks Restaurant

DE 87-92

Order No. 18,704

New Hampshire Public Utilities Commission

June 8, 1987

ORDER granting limited public utility status to a restaurant for the purpose of operating customerowned, coin-operated telephones.

Page 218

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

[N.H.] A restaurant was granted a certificate authorizing the provision of customer-owned, coin-operated telephone service subject to the following conditions: (1) the telephone shall be served by measured business service at applicable tariffed rates; (2) the telephone must be hearing-aid 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 toll free calling within municipalities; (9) the certificate holder shall be responsible for adherence to all applicable laws, rules and tariff provisions; (10) where surcharges for toll calls are authorized, pricing policies shall be clearly marked at the coin phone location; (11) the certificate holder shall comply with all rules hereafter made applicable to customerowned, coin-operated telephones.

By the COMMISSION:

ORDER

WHEREAS, on April 30, 1987, David S. Weeks filed a petition to install coin-operated telephones at Weeks Restaurant, Weeks Traffic Circle, Dover, New Hampshire; and

WHEREAS, the Federal Communications Commission Registration number has been filed with this Commission; and

WHEREAS, in Re Coin Operated Telephone Policies, DE 84-174, DE 84-159, DE 84-152, Order No. 17,486, 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 David S. Weeks dba Weeks Restaurant 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 specified 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 hearing-aid 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 toll-free calling within municipalities,

9. David S. Weeks 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. David S. Weeks 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 June, 1987.

==========

NH.PUC*06/08/87*[60247]*72 NH PUC 220*Grouse Point Club Community Association

[Go to End of 60247]

72 NH PUC 220

Re Grouse Point Club Community Association

Additional party: Mountain Village Realty, Inc.

DE 87-104
Order No. 18,705

New Hampshire Public Utilities Commission

June 8, 1987

ORDER nisi authorizing the installation and maintenance of utility lines across state-owned land.

CERTIFICATES, § 88 — Grant of license — Factors affecting grant — Public convenience and necessity — Installation and maintenance of utility lines across state-owned land.

[N.H.] A petition for licenses to install and maintain utility lines across state-owned land was granted; the commission found that the proposed lines were necessary for the provision of sanitary and life safety services, that the licenses could be exercised without substantially affecting public rights, and that the construction of the lines would be in the public good.

By the COMMISSION:

ORDER

WHEREAS, on June 4, 1987, Grouse Point Club Community Association and Mountain Village Realty, Inc. (petitioner) filed with this Commission a petition seeking a license pursuant to RSA 371:17 to install and maintain utility lines for electric, water, TV cable, and telephone across land owned by the State of New Hampshire, Department of Transportation, Railroad Bureau; and

WHEREAS, the petitioner's proposed construction is necessary to provide sanitary and life safety services to the waterfront area; and

WHEREAS, the proposed crossing is shown on the submitted site drawings and described as a twelve foot wide private, light vehicular grade crossing over the Concord to Lincoln state-owned railroad line;

WHEREAS, this Commission finds the licenses petitioned for may be exercised without substantially affecting the public rights; and

WHEREAS, this Commission finds such construction to be in the public good; and

WHEREAS, the public should be offered the 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 June 22, 1987; and it is

FURTHER ORDERED, that the petitioner effect said notification by publication of this order once in a newspaper of general circulation in the area in question, such publication to be no later than June 11, 1987 and documented by affidavit to be filed with this office within 20 days of the date of this order; and it is

FURTHER ORDERED, NISI that the petitioner be authorized, pursuant to RSA 371:17 et seq. to install and maintain the petitioned utility lines across land owned by the State of New Hampshire, Department of Transportation, Railroad Division; and it is

FURTHER ORDERED, that such authority shall be effective twenty (20) 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 eighth day of June, 1987.

==========

NH.PUC*06/11/87*[60243]*72 NH PUC 215*Lakes Region Water Company

[Go to End of 60243]

72 NH PUC 215

Re Lakes Region Water Company

DE 86-65
Second Supplemental Order No. 18,701
New Hampshire Public Utilities Commission
June 11, 1987

ORDER revising a prior order and denying a request that certain costs of a contested proceeding to extend the franchise area of a water utility be borne by city to be served by the extension. For prior order see 72 NH PUC 186.

---

1. PROCEDURE, § 1 — Revisions to commission orders.

[N.H.] In response to a letter from the counsel representing a franchised water utility, the commission revised a prior report and order to reflect the fact that it had been advised that the parties to a contested proceeding to extend the franchise area of a water utility had resolved their differences. p. 215.

2. COSTS — Contested proceeding — Water utility franchise area extension.

[N.H.] The commission denied a request for an order requiring that that portion of the cost of a contested proceeding to extend the franchise area of a water utility that was incurred after the commission issued a nisi order approving the extension be borne by the city to be served by the franchise; the request was denied on the dual basis that the commission lacks the authority to make such an order and that the water utility had the continued burden to support the cost of its petition even though it was contested by the city after the issuance of a nisi order approving the extension. p. 216.

i. PROCEDURE, § 1 — Revisions to commission orders.

[N.H.] Statement, in dissenting opinion, that the commission erred in revising an order in response to a letter from the counsel to one of the parties to the order; the dissenting commissioner found that it was inappropriate to respond to a letter from counsel that had not been provided to the other parties to the case and that the revised language did not correctly state the facts. p. 216.

By the COMMISSION:

SUPPLEMENTAL ORDER

WHEREAS, on May 21, 1987, this Commission issued its Report and Order No. 18,682 (72 NH PUC 186) which authorized Lakes Region Water Company to extend its franchise area into a limited area of the City of Laconia, New Hampshire with certain exceptions; and

WHEREAS, on May 22, 1987 Lakes Region requested a correction of a statement at p. 2 of

the Report (72 NH PUC at 187):

Having received no confirmation that resolution had been reached, the Commission issued an Order of Notice on February 2, 1987 ...; and

WHEREAS, the Company contends that it did advise the Commission by letter of December 29, 1986 that resolution had been reached; and

WHEREAS, the Company contends that the cost of this proceeding should be borne by the City of Laconia since the proceeding was only opened upon the request of the City after the Commission issued its order authorizing the franchise to Lakes Region Water Company; and

[1] WHEREAS, upon review of the record, the Commission finds it is appropriate to revise its Report to assure that it accurately portrays the events as they occurred; it is

ORDERED, that the portion of the Report stating (72 NH PUC at 187):

Having received no confirmation that resolution had been reached, the Commission issued an Order of Notice on February 2, 1987 ...

Page 215

shall be deleted and replaced by the following:

On December 29, 1986, Counsel for Lakes Region wrote the Commission that the parties did meet and did resolve their differences. Having received no confirmation from other parties that resolution had been reached, the Commission issued an Order of Notice on February 2, 1987 ...;

and it is

[2] FURTHER ORDERED, that the request that the cost of the proceeding be borne by the City of Laconia be, and hereby is, denied on the dual basis that the Commission lacks authority in this instance to make such an order, and, even if the Commission had such authority, Laconia's request was a proper and acceptable response to our Order No. 18,173 (71 NH PUC 171) issued on March 14, 1986 which, nisi, authorized the extension to Lakes Region Water Company. It continued to be Lakes Region's burden to support the costs of its contested petition after the nisi order was issued.

By Order of the Public Utilities Commission of New Hampshire this eleventh day of June, 1987.

Opinion of Commissioner Aeschliman

[i] I cannot agree with the change in the language of the Report approved by the majority for two reasons. First, I find it inappropriate to respond to a letter from Counsel that has not been provided to other parties in the case. Second, I believe the changed language does not correctly state the facts. The Commission reopened the docket because Staff advised the Commission that initial agreement of the parties on resolving the case had dissolved and that the Commission would have to settle the matter.

==========

72 NH PUC 222

Re Manchester Water Works

DE 87-81
Order No. 18,707

New Hampshire Public Utilities Commission

June 12, 1987

ORDER nisi authorizing a water utility to extend its service area.

SERVICE, § 210 — Extensions — Water utilities.

[N.H.] A water utility was conditionally authorized to extend its mains and service into an uncertificated area of a municipality; final authorization was conditioned upon interested parties having an opportunity to comment on the extension.

By the COMMISSION:

ORDER

WHEREAS, Manchester Water Works, a water public utility operating under the jurisdiction of this Commission in areas served outside the city of Manchester, by a petition filed May 4, 1987, 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, after investigation and consideration, it appears that the granting of the petition will be for the public good; and

WHEREAS, the public should be offered an opportunity to respond in support or in opposition before the Commission acts on this petition; it is hereby

ORDERED, that all persons interested in responding to the petition be notified that they may submit their comments to the Commission or may submit a written request for a hearing in this matter no later than June 30, 1987; 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 June 22, 1987, and documented 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:

An area identified as Lot #58 on town of Hooksett Map 49 and located on the westerly side of the Londonderry Turnpike.

and it is

FURTHER ORDERED, that such authority shall be effective twenty days from the date of this Order 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 twelfth day of June, 1987.

==========

NH.PUC*06/12/87*[60250]*72 NH PUC 223*Manchester Water Works

[Go to End of 60250]

72 NH PUC 223

Re Manchester Water Works

DE 87-89
Order No. 18,708

New Hampshire Public Utilities Commission

June 12, 1987

ORDER nisi authorizing a water utility to extend its mains and service area.

SERVICE, § 210 — Extensions — Water utility.

[N.H.] A water utility was conditionally authorized to extend its mains and service area where no other water utility had franchise rights in the area sought, the area would be served under the utility's regularly filed tariff, and the grant of authority was found to be in the public good.

By the COMMISSION:

ORDER

WHEREAS, Manchester Water Works, a water public utility operating under the jurisdiction of this Commission in areas served outside the city of Manchester, by a petition filed May 14, 1987, 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, after investigation and consideration, it appears that the granting of the petition will be for the public good; and

WHEREAS, the public should be offered an opportunity to respond in support or in opposition before the Commission acts on this petition; it is hereby

ORDERED, that all persons interested in responding to the petition be notified that they may submit their comments to the Commission or may submit a written request for a hearing in this matter no later than June 30, 1987; 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 June 22, 1987 and documented 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:

An area bounded on the west by Mammoth Road, on the North by the franchise boundary granted in DE 86-75, on the east by Debbie Street, and on the south by Morrill Road to its intersection with Debbie Street

and it is

FURTHER ORDERED, that such authority shall be effective twenty days from the date of this Order 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 twelfth day of June, 1987.

==========

NH.PUC*06/12/87*[60251]*72 NH PUC 224*Manchester Water Works

[Go to End of 60251]

72 NH PUC 224

Re Manchester Water Works

DE 87-90
Order No. 18,709

New Hampshire Public Utilities Commission

June 12, 1987

ORDER nisi authorizing a water utility to extend its mains and service area.

SERVICE, § 210 — Extensions — Water utility.

[N.H.] A water utility was authorized to extend its mains and service area where no other water utility had franchise rights in the area sought, the area would be served under the utility's regularly filed tariff, and the grant of authority was found to be in the public good.

By the COMMISSION:

ORDER

WHEREAS, Manchester Water Works, a water public utility operating under the jurisdiction of this Commission in areas served outside the city of Manchester, by a petition filed May 14, 1987, 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, after investigation and consideration, it appears that the granting of the petition will be for the public good; and

WHEREAS, the public should be offered an opportunity to respond in support or in opposition before the Commission acts on this petition; it is hereby

ORDERED, that all persons interested in responding to the petition be notified that they may submit their comments to the Commission or may submit a written request for a hearing in this matter no later than June 30, 1987; 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 June 22, 1987 and documented 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 the intersection routes 93 and 293 in Hooksett, then proceeding easterly to the intersection of route 93 and the Manchester/Hooksett town line, then proceeding south westerly and westerly along the town line to its intersection with route 293, then proceeding northeasterly to the point of beginning.

and it is

FURTHER ORDERED, that such authority shall be effective twenty days from the date of this Order 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 twelfth day of June, 1987.

==========

NH.PUC*06/12/87*[60252]*72 NH PUC 225*Claremont Gas Light Company, Inc.

[Go to End of 60252]

72 NH PUC 225

Re Claremont Gas Light Company, Inc.

DR 86-258
Order No. 18,710

New Hampshire Public Utilities Commission

June 12, 1987

APPROVAL of tariff revisions of a gas distribution utility.

RATES, § 308 — Disconnection and reconnection charges — Gas distribution utility.

[N.H.] A gas distribution utility was permitted to increase from $2 to $18 the charges for reconnecting service to short-term customers and after disconnection due to nonpayment of bills, because the revised charges were in line with similar provisions approved for other gas utilities under the commission's jurisdiction and with the amount that the utility currently charged for the services; however, the commission reiterated that the utility was expected to apply charges authorized by its existing tariffs, and that tariff revisions should precede, not follow, changes in rates.

By the COMMISSION:

REPORT

On September 24, 1986, Claremont Gas Light Company (Claremont), a public utility providing gas service in the State of New Hampshire, filed NHPUC Tariff No. 10 — Gas which contained Proposed Revisions intended to update the currently effective NHPUC Tariff No. 9, portions of which have been in effect since 1948.

On November 21, 1986 the Commission issued Order No. 18,477 (71 NH PUC 658) suspending Tariff No. 10 pending investigation and decision.

Following a meeting between Staff and the Company to discuss the shortcomings of the proposed Tariff No. 10, the Commission issued Supplemental Order No. 18,662 on May 7, 1987 requiring the Company to submit a revised Tariff No. 10 on or before May 15, 1987.

The Company submitted revisions to Tariff No. 10 on May 15, 1987 and again on June 5,

1987.

COMMISSION ANALYSIS

The Company's proposed tariff incorporates two types of revisions. First, Claremont 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, and will therefore allow them.

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 increases from $2 to $18 in the charges for reconnecting service to short-term customers and after disconnection due to nonpayment of bills. The Commission finds that the revised charges are in line with similar provisions approved for other gas utilities under our jurisdiction and with what the Company is currently charging for these services. While the Commission finds these charges reasonable and will therefore accept them, we remind the Company that in the future we will expect it to apply charges authorized by its existing tariff, and that tariff changes should precede not follow changes in rates. The major substantive change not involving Company revenue concerns the cost of gas adjustment clause. In response to Staff's request for a clearer explanation as to how the clause operates and the mechanics of the cost of gas adjustment calculation, the Company submitted revised tariff pages. We find that these revised pages mirror the language and calculations approved for other gas utilities under our jurisdiction, and we therefore accept them.

In Sub-section 4.d Unauthorized Use, the

Company inserted on Page 6 the following new sentences:

Unauthorized use of gas is a theft of property and a theft of services, punishable by imprisonment, fine, or both. The Company may take civil action to recover damages, which shall include the cost of utility service wrongfully used, the cost of equipment repair or replacement as necessary, attorney fees, and all costs to the utility, including labor in undertaking and completing the investigation resulting in a determination of liability.

The Commission finds this provision to be reasonable and in accord with similar provisions approved for other gas utilities under our jurisdiction.

In Sub-section 4.b Right to Reject, the Company inserted on Page 6 the following new sentences:

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 gas utilities under our jurisdiction.

Our Order will issue accordingly.

ORDER

WHEREAS, upon consideration of the forgoing Report which is made a part hereof; it is therefore

ORDERED, that Claremont Gas Light Company's NHPUC Tariff No. 10 — Gas, be, and hereby is, authorized effective as of June 15, 1987.

By Order of the Public Utilities Commission of New Hampshire this twelfth day of June, 1987.

==========

NH.PUC*06/15/87*[60253]*72 NH PUC 226*Southern New Hampshire Water Company, Inc.

[Go to End of 60253]

72 NH PUC 226

Re Southern New Hampshire Water Company, Inc.

DR 86-131
Supplemental Order No. 18,711

New Hampshire Public Utilities Commission

June 15, 1987

ORDER approving rate case expense of a water utility.

EXPENSES, § 89 — Regulation or rate case expenses — Water.

[N.H.] A rate case expense of $43,600 was approved for a water utility, after the utility satisfactorily responded to commission inquiries to conclude an investigation of the matter.

By the COMMISSION:

SUPPLEMENTAL ORDER

WHEREAS, on February 9, 1987 the Commission issued its Order No. 18,568 (72 NH PUC 58) approving an increase in rates for Southern New Hampshire Water Company, Inc.; and

WHEREAS, in said order the Commission also required Southern New Hampshire Water Company, Inc. to "submit further detail of its rate case expenses in accordance with (the order's) foregoing report"; and

WHEREAS, on May 27, 1987 Southern New Hampshire Water Company, Inc. satisfactorily responded to the Commission inquiries into rate case expense, concluding the Commission's investigation of the matter; and

WHEREAS, the Commission finds that the rate case expense incurred in the instant

proceedings by Southern New Hampshire Water Company, Inc. is reasonable; it is therefore

ORDERED, that pursuant to the

stipulation approved by the Commission in Order No. 18,568, Southern New Hampshire Company, Inc. rate case expense of $43,600, updated as of February 13, 1987, shall be, and hereby is, approved; and it is

FURTHER ORDERED, that Southern New Hampshire Water Company, Inc. file a tariff page calculating a surcharge in accordance with the Stipulation approved in Order No. 18,568 effective on all bills rendered on or after July 1, 1987.

By Order of the Public Utilities Commission of the State of New Hampshire this fifteenth day of June, 1987.

==========

NH.PUC*06/15/87*[60254]*72 NH PUC 227*New England Telephone and Telegraph Company, Inc.

[Go to End of 60254]

72 NH PUC 227

Re New England Telephone and Telegraph Company, Inc.

DR 86-241
Order No. 18,713

New Hampshire Public Utilities Commission

June 15, 1987

ORDER authorizing continuation of custom calling restimulation program by local exchange telephone carrier.

PUBLIC UTILITIES, § 135 — Operation and utility practices — Telephone — Custom calling restimulation program.

[N.H.] A local exchange telephone carrier was permitted to continue its custom calling restimulation program on a state-wide basis where call waiting was available, because the program was in compliance with a tariff allowing the carrier to introduce promotional and market trial programs following advance notification to the commission, and the carrier had provided for adequate public notification by mailing a direct mail notice to all customers.

By the COMMISSION:

ORDER

WHEREAS, pursuant to Order No. 18,401 (71 NH PUC 542) in the captioned docket the Commission approved the Call Waiting Promotional Program, pursuant to Part A, Section 1.3.5, of New England Telephone and Telegraph Company, Inc. Tariff No. 75 on September 16, 1986; and

WHEREAS, the tariff allows the Company to introduce promotional and market trial programs from time to time following advance notification to the Commission; and

WHEREAS, the tariff further states that subsequent to the review of the proposed promotion and/or market trial program by the Public Utilities Commission, and after resolution of objections and concerns which may be raised by the Public Utilities Commission, promotional and market trial programs will be implemented following 30 days notice; and

WHEREAS, on May 29, 1987 New England Telephone filed a letter stating its intent to continue the Custom Calling Restimulation Program on a state-wide basis where call waiting is available; and

WHEREAS, the Company has provided for adequate public notification by mailing a direct mail notice to all customers which will include an informational kit on custom calling service along with a "post-it note" that states the connection date, monthly rate, installation charge, and demonstration period and in addition customers will be sent a postcard approximately one month before the two month promotional period ends notifying them of the date that billing will begin; and

WHEREAS, the proposed filing appears to comply with the promotional and market trial programs tariff; it is hereby

ORDERED, that the proposed Custom Calling Service Restimulation on a state-wide basis where call waiting is available be, and hereby is, approved for effect as of the date of this Order.

By Order of the Public Utilities Commission of New Hampshire this fifteenth day of June, 1987.

==========

NH.PUC*06/16/87*[60255]*72 NH PUC 228*Dixville Telephone Company

[Go to End of 60255]

72 NH PUC 228

Re Dixville Telephone Company

DE 86-154
Order No. 18,714

New Hampshire Public Utilities Commission

June 16, 1987

PETITION by local telephone carrier for authority to reduce rates to reflect the loss of inside wiring service; granted.

RATES, § 553 — Telephone — Kinds of service — Inside wiring — Elimination — Rate reduction.

[N.H.] Although not required to do so, a local exchange telephone carrier was allowed to reduce its monthly base rates after eliminating its free inside wiring services, in recognition of the diminution of service that resulted from the deregulation of inside wiring.

By the COMMISSION:

ORDER

WHEREAS, the Commission required Dixville Telephone Company to file an inside wire tariff revision which complied with the Report and Order in Re Detariffing Telephone Utilities' Inside Wire, DE 86-154, Order No. 18,514, 71 NH PUC 801 (1986); and

WHEREAS, a compliance tariff was filed on May 29, 1987; and

WHEREAS, such compliance tariff included a decrease for monthly base rates which was not required by Order No. 18,514 (Section 2, Revision 1, Page 1); and

WHEREAS, the Company alleges that the monthly base rates were lowered in consideration to the customer as compensation for eliminating inside wire services; and

WHEREAS, the proposed decrease is just and reasonable given the diminution of service; and

WHEREAS, pursuant to, N.H. Rev. Stat. Ann. §378:3 no change shall be made in any rate except with such notice to the public as the Commission shall direct, it is hereby

ORDERED, that Dixville Telephone Company NHPUC No.2 — Telephone Section 2, Revision 1, Page 1 be, and hereby is approved for effect ten days after the date of the order; and it is

FURTHER ORDERED, that the following customer notification will be included as a bill insert with the next customer bill:

Important Customer Notice

1. Inside Wire Services — Due to a change in Federal Government regulations, as of January 1, 1987, the Public Utility Com- mission of New Hampshire will no longer regulate Dixville Telephone Company's service to the "inside wire" of your home or business. Inside wire is the wire which runs in the interior of your home or business either from the protector, or if you have one, the network interface device to your telephone. As of January 1, 1987, you may choose to provide service to your own inside wire or you may call a contractor or the telephone company to provide service.

2. Lower Rates — Since the Telephone Company will no longer provide service to your inside wire as a part of basic telephone service, your monthly basic rate has been decreased to $4.25 for Unlimited Residence or Business service. Repairs to inside wiring by Dixville

Telephone will be charged on a per incident basis rather than as part of the basic rate; and it is

FURTHER ORDERED, that Dixville shall refile Section 2, Revision 1, Page 1, to its NHPUC No. 2 — Telephone tariff and change the effective date of the page from January 1, 1987 to ten days after the date of this Order.

By order of the Public Utilities Commission of New Hampshire this sixteenth day of June, 1987.

==========

NH.PUC*06/17/87*[60256]*72 NH PUC 229*Granite State Gas Transmission, Inc.

[Go to End of 60256]

72 NH PUC 229

Re Granite State Gas Transmission, Inc.

Additional applicant: Portland Pipe Line Corporation

DE 87-100
Order No. 18,715

New Hampshire Public Utilities Commission

June 17, 1987

ORDER authorizing a pipeline originally constructed for crude oil to be used for natural gas instead.

CERTIFICATES, § 121 — Pipeline — Conversion of use — Factors.

[N.H.] Although a permit granted a pipeline company for constructing plant crossing state land and public waters was premised on the pipeline being used to transport crude oil, conversion to use for natural gas was allowed, where no environmental or economic impact would result.

By the COMMISSION:

ORDER

WHEREAS, on May 28, 1987, Granite State Gas Transmission Inc. ("Granite") and Portland Pipe Line Corporation ("PPL") filed with this Commission a Petition for Authorization to Permit a Pipeline to Cross Certain Rivers and State-Owned Land pursuant to RSA 371:17; and

WHEREAS, Granite and PPL (hereinafter "petitioners") aver that the conversion of the eighteen-inch crude oil pipeline facility to a natural gas pipeline facility (hereinafter the "Project") will require almost no construction in the State of New Hampshire and that there will be no disturbance of waterways, streets and highways crossed under by the eighteen inch line;

and

WHEREAS, petitioners further aver that only minimal work will be done at three existing valve sites and that none of these valves is located in or adjacent to any public waters or State-owned land and therefore the requested license does not substantially affect the public rights in public waters or State-owned land; and

WHEREAS, petitioners, on June 11, 1987 filed a Motion for Issuance of Order NISI specifying that comprehensive actions have been taken to notify appropriate New Hampshire state agencies and state legislators, as well as cities and towns and landowners along the pipeline right-of-way, and stating that these potentially interested parties have no objections to the Project; and

WHEREAS, upon investigation, the Commission is satisfied that the Project will not substantially affect the public rights in public waters and State-owned lands; it is hereby

ORDERED NISI, that pursuant to, inter alia, RSA 371:17, the Petition of Granite and PPL for a license in perpetuity to use and maintain the eighteen-inch line in either natural gas or crude oil service under and across any and all public waters and state-owned lands under and across which it currently passes is approved; and it is

FURTHER ORDERED, that said petitioners notify all persons desiring to be heard or to submit comments or exceptions to this Order NISI by causing an attested copy thereof to be published once in a newspaper of general circulation in that portion of the State in which operations are proposed to be conducted, said publication to be made on or before June 22, 1987, said publication to be designated in an affidavit to be made on a copy of this Order NISI and filed with this office; and it is

FURTHER ORDERED, that any person may file with the Public Utilities Commission, 8 Old Suncook Road, Concord, New Hampshire, 03301 a request for a hearing or comments or exceptions to the Petition no later than July 10, 1987; and it is

FURTHER ORDERED, that this Order NISI shall become effective on July 13, 1987 unless the Commission orders otherwise in a supplemental order issued prior to the effective date.

By order of the Public Utilities Commission of New Hampshire this seventeenth day of June, 1987.

==========

NH.PUC*06/19/87*[60258]*72 NH PUC 230*Essex Hydro Associations (Briar Hydro)

[Go to End of 60258]

72 NH PUC 230

Re Essex Hydro Associations (Briar Hydro)

DR 85-407

Order No. 18,717

New Hampshire Public Utilities Commission

June 19, 1987

ORDER approving an agreement providing a hydropower site developer with an extension of time for its commercial start-up date.

COGENERATION, § 10 — Operating practices — Extension of start-up date — Effect on longterm rates.

[N.H.] The commission approved an agreement entered into by an electric utility and a hydropower project developer, granting the developer a short extension of time to bring the project on line without losing any benefits from a previously approved 30-year long-term rate.

By the COMMISSION:

ORDER

WHEREAS, on January 23, 1986, the Commission by Order No. 18,086 (71 NH PUC 103) approved Essex Hydro Associate's (EHA) petition for a 30 year long term rate commencing in power year 1987 for its Briar Hydro project pursuant to Re Small Energy Producers and Cogenerators, Docket No. DR 85-215, Report and Order No. 17,838 (September 5, 1985), 70 NH PUC 753, 69 PUR4th 365 (DR 85-215); and

WHEREAS, on June 5, 1987 EHA petitioned the Commission for clarification on the continued validity of its rate despite EHA's currently projected on-line date of November 30, 1987 and in light of the Commission's recently issued Orders in Re HDI-Hinsdale — Upper Robertson Dam, Docket No. DR 84-347 and Re D.J. Pitman International Corp. — Macallen Dam, Docket No. DR 85-139; and

WHEREAS, on June 15, 1987 EHA filed a copy of an Agreement between EHA (Briar Hydro) and Pubic Service Company of New Hampshire dated June 11, 1987 in which the parties agree that provided EHA proceeds in good faith to bring its Briar Hydro project on-line no later than February 29, 1988, EHA shall be entitled to pick up at the time of its actual commercial operation the revenue stream granted under Order 18,086 (71 NH PUC 103) for the remainder of its original 30 year term; and

WHEREAS, the last start year available under DR 85-215 was power year 1988; and

WHEREAS, the Commission finds that said Agreement represents a reasonable and appropriate resolution and is in the public good; it is hereby

ORDERED, that the Agreement is approved.

By Order of the Public Utilities Commission of New Hampshire this nineteenth day of June, 1987.

==========

NH.PUC*06/19/87*[60259]*72 NH PUC 230*HDI-Hinsdale Inc. — Upper Robertson Dam

[Go to End of 60259]

72 NH PUC 230

Re HDI-Hinsdale Inc. — Upper Robertson Dam

DR 84-347
Order No. 18,718

New Hampshire Public Utilities Commission

June 19, 1987

ORDER affirming a prior decision to rescind a hydroelectric power developer's premature longterm rate filing.

Page 230

COGENERATION, § 24 — Rates — Rescission of approval — Factors.

[N.H.] Where a hydroelectric project developer had made little progress, had not yet received a federal license, and had filed prematurely for long-term rate authority, the commission affirmed its power to rescind whatever long-term rate filing might have been approved.

By the COMMISSION:

REPORT

On November 19, 1984 HDI-Hinsdale, Inc. (HDI) petitioned the Commission for a long term rate for a proposed hydroelectric project known as the Upper Robertson Dam pursuant to 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) (Order No. 17,104). The Commission approved nisi a 29 year rate commencing in power year 1987 on February 5, 1985 by Order No. 17,434 (70 NH PUC 49) and reconfirmed that Order on March 6, 1985 by Order No. 17,485 (70 NH PUC 87). On April 8, 1987, HDI filed a Motion to Amend its long term rate filing pursuant to DE 83-62 and on May 11, 1987 the Commission denied HDI's Motion to Amend and rescinded Order No. 17,434 and Order No. 17,485. On May 29, 1987, Hinsdale filed a Motion for Rehearing.

HDI argues that the Commission erred in applying the Federal Energy Regulatory Commission (FERC) licensing requirement to the Upper Robertson Dam project because the requirement did not exist at the time of the HDI rate filing. HDI contends that the Commission did not indicate that FERC licensing was a prerequisite to a long term rate filing or that failure to meet the predicted on-line date because of "uncontrollable and unwarranted" licensing delays

would be grounds for withdrawal of the long term rate order. It argues that in reliance on the continued validity of the rate order, HDI expended over $400,000 on the Upper Robertson Dam and that the requested relief (approval of a late start date) results in a loss only to HDI. Having reviewed the motion for rehearing and our previous Orders, we find that HDI has raised no argument or fact that was not fully considered prior to the issuance of Order No. 18,668 (72 NH PUC 169), and we will therefore deny the Motion for Rehearing.

HDI errs when it suggests that the commission is rescinding HDI's long term rate on the basis of HDI's failure to obtain a FERC license prior to filing for its rate. Order No. 18,668 clearly states, "However, since HDI relied on the approval of its rate to go forward with its project, we will not now rescind the rate on the basis that it was invalid ab initio due to the lack of the FERC license." 72 NH PUC at 171.

The basis of the Commission's rescission of Order Nos. 17,434 and 17,485 is rather the failure of HDI to fulfillits obligations as set forth in its rate order. HDI is incorrect when it states that the Commission gave no indications that failure to achieve the online date as specified in its original petition and rate order would be grounds for rescission of the long term rate order. Since the Interim Order in DE 83-62 (No. 16,619) (68 NH PUC 531), the Commission has required that developers applying for a long term rate attest that the "producer will sell its entire output to PSNH at the specified rates over the entire applicable time period." This requirement was reaffirmed in Order No. 17,104 and HDI did in fact include this statement as the first representation in its long term rate petition. The commission has reemphasized the seriousness with which it views these representations since July 1985 when it denied petitions for long term rates as premature because the developer could not credibly represent that he could reasonably fulfill the obligations stated in his rate petition. See for example, Re Northeast Hydrodevelopment Corp., Docket No. DR 85-187, Order No. 17,753, 70 NH PUC 645 (1985). That HDI continued to invest in the litigation before the FERC for the Upper Robertson Dam, despite its own

representations and the subsequent Commission orders, was at its own risk, and that investment does not now entitle HDI to a waiver of its obligations under its rate order.

Finally, HDI errs when it states that only HDI itself is harmed by an amendment to its rate order. Having found that HDI's rate petition has proved to be premature, we can not waive its obligations to develop within the approved time frame without granting HDI preferential treatment compared to projects that will commence production at the same time as is now contemplated by HDI but whose developers filed timely rate petitions pursuant to subsequent rate orders. To allow HDI to retain its rate order pursuant to DE 83-62 would be both discriminatory in relation to other small power producers and require ratepayers to pay rates in excess of the avoided cost estimates current at the time of a mature filing from HDI. As HDI has only recently obtained its license and has not yet begun construction or completed its interconnection study, a mature filing could be made pursuant to Re Public Service Co. of New Hampshire — Avoided Costs, Docket No. DR 86-41. Rates issuing from DR 86-41 are anticipated to be substantially lower than those available under DE 83-62.

Our order will issue accordingly.

ORDER

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

ORDERED, that HDI-Hinsdale, Inc.'s Motion for Rehearing be, and hereby is, denied.

By order of the Public Utilities Commission of New Hampshire this nineteenth day of June, 1987.

==========

NH.PUC*06/19/87*[60260]*72 NH PUC 232*D.J. Pitman International Corporation

[Go to End of 60260]

72 NH PUC 232

Re D.J. Pitman International Corporation

DR 85-139
Order No. 18,719

New Hampshire Public Utilities Commission

June 19, 1987

ORDER reaffirming the commission's power to rescind prematurely filed rates for small power projects.

COGENERATION, § 24 — Rates — Rescission of approval — Factors.

[N.H.] Where a hydropower developer runs behind on its construction schedule to the point that it is unlikely that construction will even be initiated by the date projected for commercial operation, the commission may rescind whatever rate authority might have been granted the developer prematurely, even if no automatic "drop dead" date for rescission had ever been specified.

APPEARANCES: As previously noted.

By the COMMISSION:

REPORT

On May 8, 1985 D.J. Pitman International Corporation (Pitman) filed a petition with the Commission pursuant to Re Small Energy Producers and Cogenerators, Docket No. 83-62, Report and Eighth Supplemental Order No. 17,104, 69 NH PUC 352, 61 PUR4th 132 (1984) (Order No. 17,104), for approval of a long term rate for the sale of electricity to Public Service

Company of New Hampshire (PSNH) from its proposed 560 kW hydroelectric project at the Macallen Dam. The Commission approved Pitman's petition nisi by Order No. 17,647, (70 NH PUC 511), which Order became effective on July 5, 1985. On February 9, 1987, the Commission issued Order No. 18,563

stating that "independent investigation by the Commission has revealed that Pitman has not yet begun construction of its project" and ordered Pitman "to show cause why approval of the long term rate filing of Pitman ... should not be rescinded." The Commission granted Pitman an extension of time on February 13, 1987 and continued the hearing until April 8, 1987. On April 8, 1987, Pitman filed a Petition for a Declaratory Ruling based on the documen- tation it had filed, asserting that the primary issue was the legal issue of the proper interpretation of the required on-line date of the project rather than a factual issue. Following the filing of memoranda by PSNH and Pitman, the Commission issued Report and Order No. 18,667 (72 NH PUC 166) on May 11, 1987, rescinding approval of Pitman's long term rate filing.

On June 1, 1987, Pitman filed a Motion for Rehearing asserting that Order No. 18,667 was unjust, unlawful and unreasonable. Pitman contends that Order No. 18,667 is vague in that it is internally inconsistent and fails to identify clearly which conditions of its rate order Pitman will be unable to fulfill. Pitman claims that the Commission can not base its rescission of its Rate Order on Pitman's competitive license situation before the Federal Energy Regulatory Commission (FERC) because the issue was not raised when Pitman petitioned for its long term rate, and other developers who were in the process of obtaining FERC licenses have received Commission rate orders. Pitman further contends that the fact that the project will not come on-line by August 31, 1987 can not be the basis for a rescission because Order No 18,667 filed pursuant to Order No. 17,104 did not include any "drop dead" date for the commencement of commercial operation. Pitman terms Order No. 17,104 a rule, which can not be modified without adherence to the procedures established in the State Administrative Procedure Act. Pitman argues that even if the establishment of a "drop dead" date coincident with the end of the first power year contained in a filing is not a new rule within the meaning of RSA 541-A, the determination represents a change in Commission policy which, absent an opportunity to be heard, violates Pitman's due process rights.

Commission Analysis

Pitman's Motion for Rehearing contains no fact or argument which had not been fully reviewed prior to the issuance of Order No. 18,667, and we will therefore deny the motion. However, to the extent that Order No. 18,667 is unclear as to the basis for the rescission of Pitman's rate order, we will clarify that basis.

Pitman errs when it suggests that the rescission is based on its competitive license situation at the FERC. As stated in Order No. 18,667, "Since Pitman relied on the approval of its rate to go forward with its project, we will not now rescind the rate on the basis that it was invalid ab initio due to the lack of a FERC license." Order No. 18,667 at 5 (72 NH PUC at 168).

Our rescission of the rate order is rather based on the acknowledgment by Pitman that it is unable to reasonably fulfill its obligations in its rate order. Those obligations include, most

importantly in the instant proceeding, the representation that beginning in a specified year (here, in power year 1987) the petitioner will sell the output from his project to PSNH and provide reliable service over the life of the obligation. These requirements are not new but were clearly set forth in the interim Order in DE 83-62 (September 2, 1983): "... the producer will sell its entire output to PSNH at the specified rates over the entire applicable time period; ..." (68 NH PUC 531, 544) and readopted in the final Order, Order No. 17,104. The applicable rates and time period are those filed by the Petitioner on the worksheets in the long term rate petition. Pitman, as required pursuant to Order No. 17,104, included this affirmation as the first of its representations in its petition for a long term rate filed on May 8, 1985. Pitman can not now claim that the Commission expectation that Pitman will

reasonably discharge its stated obligation represents a change in Commission policy that violates Pitman's due process rights.

The Commission has not adopted a "drop dead" date, beyond which a developer's rate order is automatically rescinded. We do, however, expect reasonable compliance with the averred representations in a developer's petition. Pitman is presently less than three months before the end of the power year that it filed as the commercial operation date for its project, the last start year available pursuant to Order No. 17,104. Meanwhile, its license is still being contested before the FERC and it has not yet begun construction. Its commercial operation will be well beyond any reasonable compliance with the terms of its original petition and its rate order.

Finally, while the point is moot since the Commission's present findings do not constitute a change from past determinations, we note that Pitman errs when it describes Order 17,104 as a "rule". Docket No. DE 83-62 was not a rulemaking procedure pursuant to RSA 541-A:3 and its findings in that docket were not rules as defined by RSA 541-A (XIII).

Our Order will issue accordingly.

ORDER

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

ORDERED, that the Motion for Rehearing of D.J. Pitman International Corporation be, and hereby is, denied; and it is

FURTHER ORDERED, that Order No. 18,667 be, and hereby is, reaffirmed.

By order of the Public Utilities Commission of New Hampshire this nineteenth day of June, 1987.

==========

NH.PUC*06/19/87*[60261]*72 NH PUC 234*Manchester Gas Company

[Go to End of 60261]

Re Manchester Gas Company

Additional party: Nylon Corporation of America

DR 87-78
Order No. 18,720

New Hampshire Public Utilities Commission

June 19, 1987

ORDER approving a special contract for natural gas service.

RATES, § 380 — Natural gas — Special contract rates — Commission approval.

[N.H.] A special contract governing the terms and conditions under which a natural gas distribution utility would sell natural gas to a corporation was approved where the commission found that the contract was in the public good.

By the COMMISSION:

ORDER

WHEREAS, on April 6, 1987, Manchester Gas Company filed with this Commission its Special Contract No. 34, said contract outlining the terms and conditions under which that Company would sell natural gas to Nylon Corporation of America; and

WHEREAS, the Commission finds that issue of Special Contract No. 34 is in the public good; it is

ORDERED, that Special Contract No. 34 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 June, 1987.

==========

NH.PUC*06/19/87*[60262]*72 NH PUC 235*Gas Service Inc.

[Go to End of 60262]

72 NH PUC 235

Re Gas Service Inc.

Additional party: St. Joseph's Hospital

DR 87-103
Order No. 18,721

New Hampshire Public Utilities Commission

June 19, 1987

ORDER approving a special contract for natural gas service.

RATES, § 380 — Natural gas — Special contract rates — Commission approval.

[N.H.] A special contract governing the terms and conditions under which a natural gas distribution utility would sell natural gas to a hospital was approved where the commission found that the contract was in the public interest.

By the COMMISSION:

ORDER

WHEREAS, on May 28, 1987, Gas Service Inc. filed with this Commission its Special Contract No. 47, said contract outlining the terms and conditions under which that Company would sell natural gas to St. Joseph's Hospital; and

WHEREAS, the Commission finds that issue of Special Contract No. 47 is in the public good; it is

ORDERED, that Special Contract No. 47 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 June, 1987.

==========

NH.PUC*06/25/87*[60263]*72 NH PUC 235*Grouse Point Club Community Association, Inc.

[Go to End of 60263]

72 NH PUC 235

Re Grouse Point Club Community Association, Inc.

Additional party: Mountain Village Realty, Inc.

DE 87-104
First Supplemental Order No. 18,724

New Hampshire Public Utilities Commission

June 25, 1987

ORDER correcting license to install and maintain utility lines beneath state-owned land. For prior order see 72 NH PUC 220.

CERTIFICATES, § 134 — Modification and amendment — Correction.

[N.H.] A license to install and maintain utility lines beneath state-owned land was amended

to authorize such licenses to each of the entities providing service, correcting flawed portions of the prior order granting one license for the crossing of four utilities.

By the COMMISSION:

SUPPLEMENTAL ORDER

WHEREAS, on June 4, 1987, Grouse Point Club Community Association, Inc. and Mountain Village Realty, Inc. jointly filed with this Commission their petition for license to install and maintain utility lines beneath land owned by the Bureau of Railroads, Department of Transportation, State of New Hampshire; and

WHEREAS, on June 8, 1987, this Commission issued its Order No. 18,705 (72 NH PUC 220) granting such license (NISI) and;

WHEREAS, subsequent investigation has revealed that certain portions of said order are flawed inasmuch as it granted one license for the crossing of four utilities; and

WHEREAS, electric service shall be furnished by the New Hampshire Electric

Cooperative, Inc. a public utility in the State of New Hampshire; and

WHEREAS, telephone service will be furnished by the New England Telephone & Telegraph Company, Inc., also a public utility in the State of New Hampshire; and

WHEREAS, cable television service will be furnished by the Community TV Corporation, an entity not under this Commission's jurisdiction; and

WHEREAS, water service will be provided by the Grouse Point Club Community Association, Inc., also not a public utility under this Commission's jurisdiction; it is

ORDERED, that the portion of Commission's Order No. 18,705 which reads (72 NH PUC at 220) "FURTHER ORDERED, NISI that the petitioner will be authorized, pursuant to RSA 371:17 et seq to install and maintain the petitioned utility lines across land owned by the State of New Hampshire, ... " is amended to authorize such licenses to the New Hampshire Electric Cooperative, Inc., New England Telephone & Telegraph Company, Inc., Community TV Corporation, and the Grouse Point Club Community Association, Inc.; and it is

FURTHER ORDERED, that all construction comply with the requirements of the National Electrical Safety Code and any specifications of the Railroad Bureau.

By order of the Public Utilities Commission of New Hampshire this twenty-fifth day of June, 1987.

==========

NH.PUC*06/26/87*[60264]*72 NH PUC 236*Contribution in Aid of Construction

[Go to End of 60264]

72 NH PUC 236

Re Contribution in Aid of Construction

DF 87-113
Order No. 18,725

New Hampshire Public Utilities Commission

June 26, 1987

ORDER opening docket to investigate the appropriate accounting, tariff, and policy treatment of contributions in aid of construction.

---

1. VALUATION, § 248 — Property not paid for — Contributions in aid of construction — Tax treatment.

[N.H.] The commission opened a docket to investigate the appropriate accounting, tariff, and policy treatment of contributions in aid of construction (CIAC) in light of (1) CIAC having been deemed to be taxable to all utilities, except for telephone utilities, under the Tax Reform Act of 1986, and (2) consumer complaints alleging that some utilities charged customers for the projected tax on CIAC, in possible violation of their tariffs; utilities were informed that any charges to customers relating to tax on CIAC would be subject to possible refund. p. 237.

2. VALUATION, § 248 — Property not paid for — Contributions in aid of construction — Tax treatment.

[N.H.] All non-telephone utilities were directed to submit written reports addressing the following: (1) the effect of the Tax Reform Act of 1986 (TRA 86) on their revenues from contributions in aid of construction (CIAC); (2) how their book accounting treatment relates to the prescribed tax treatment under TRA 86; (3) whether they are charging customers for tax on revenues derived from CIAC, including the manner and amount that customers are being charged and the legal justification for such charges; (4) the utility's position as to the appropriate accounting tariff, and policy treatment which should be applied to CIAC as related to the change in the tax law. p. 237.

Page 236

By the COMMISSION:

ORDER

[1, 2] Contributions in aid of construction having been deemed to be taxable revenues to all utilities except for telephone utilities under the Tax Reform Act of 1986; and

WHEREAS, the treatment of said contributions in aid of construction for utility book

accounting purposes differs from the prescribed tax treatment; and

WHEREAS, the Commission has received numerous consumer complaints and other information alleging that some utilities are charging customers for the projected tax on said contributions in possible violation of the tariffs that are presently in effect; it is

ORDERED, that docket number DF 87-113 is hereby opened to investigate the abovecited allegations and to receive the comments and positions of the various New Hampshire franchised utilities regarding the appropriate accounting and policy treatment which should be applied to contributions in aid of construction regarding the abovecited change in the tax law; and it is

FURTHER ORDERED, that all New Hampshire franchised utilities, except for telephone utilities, are mandatory parties to this docket; and it is

FURTHER ORDERED, that all non-telephone franchised New Hampshire utilities file with the Commission no later than September 1, 1987 a written report which addresses in detail:

1. The effect of the Tax Reform Act of 1986 on their revenues from contributions in aid of construction.

2. How their book accounting treatment relates to the prescribed tax treatment under the Tax Reform Act of 1986.

3. Whether or not they are charging customers for said tax on revenues derived from contributions in aid of construction, including, among other things, the manner in which customers are being charged, the amount customers are being charged and the legal justification for said charges.

4. The utility's position as to the appropriate accounting, tariff and policy treatment which should be applied to contributions in aid of construction as related to the change in the tax law.

and, it is

FURTHER ORDERED, that pending further order, any charges to customers relating to the above-cited changes in the tax laws are subject to possible refund with interest.

By order of the Public Utilities Commission of New Hampshire this twenty-sixth day of June, 1987.

==========

NH.PUC*06/29/87*[60265]*72 NH PUC 237*Public Service Company of New Hampshire

[Go to End of 60265]

72 NH PUC 237

Re Public Service Company of New Hampshire

DR 86-122
14th Supplemental Order No. 18,726
New Hampshire Public Utilities Commission
June 29, 1987

ORDER authorizing an electric utility to file revised tariffs effecting a rate increase and requiring the utility to refund the difference between bonded (temporary) and permanent rates.

---

1. VALUATION, § 25 — Methods and measures for ascertaining value — Value for rate-making — Date of valuation — Average or year-end figures.

[N.H.] An electric utility was required to calculate plant in service for rate-making purposes

Page 237

on the basis of a 13-month test-year average rather than a year-end balance. p. 243.

2. VALUATION, § 192.1 — Property included or excluded — In general — Tax reserves and property financed by tax savings.

[N.H.] Where deferred taxes are treated as a charge against rate base, a change in deferred taxes arising from a change in tax rates should not result in an adjustment to the average rate base when doing so would violate the matching principle of accrual accounting. p. 244.

3. EXPENSES, § 9 — Ascertainment of expenses and future estimates — Generally — Test year data — Adjustments thereto.

[N.H.] Known and measurable changes occurring during the twelve months following the test year may be used to make adjustments to testyear data, particularly where the test-year data were already stale and the utility provided evidence that expenses would probably be higher in the rate-effective period. p. 250.

4. RETURN, § 26.1 — Reasonableness of return — Factors affecting — Cost of capital generally — Capital structure.

[N.H.] A hypothetical capital structure should be imputed to a utility only to: (1) reflect more accurately the conditions expected to prevail during the rate-effective period; or (2) encourage the utility to change its practices and to conform them to an optimum. p. 253.

5. RETURN, § 26.4 — Reasonableness of return — Factors affecting — Cost of capital generally — Cost of equity capital.

[N.H.] While the discounted cash flow (DCF) method of determining the cost of equity capital is preferable to the risk premium method because risk premiums are subject to considerable variation during different time periods, a risk premium may be added to the result suggested by the DCF method without violating the stricture against allowing investors a return on speculative investments, particularly where a nuclear construction program adds risk to the stock of a utility. p. 257.

6. DEFINITIONS — Attrition.

[N.H.] Attrition is an erosion of the earning power of a revenue producing investment. p. 259.

i. VALUATION, § 192.1 — Property included or excluded — In general — Tax reserves —

Normalization.

[N.H.] Discussion of the normalization of plant additions for federal income tax purposes where the additions were made prior to 1971. p. 250.

ii. RETURN, § 26.4 — Reasonableness of return — Factors affecting — Cost of capital generally — Cost of equity capital.

[N.H.] Discussion, in dissenting opinion, of: (1) applying two methods of calculating the cost of equity — the discounted cash flow (DCF) model and the risk premium method — to a utility constructing a nuclear generating plant; (2) the inaccuracies that may arise from adding a risk premium to the result suggested by a DCF model, such as double-counting the risk that faces a small utility that undertakes a large nuclear construction program. p. 265.

APPEARANCES: Sulloway, Hollis and Soden by Martin L. Gross, Esq. and Carl Anderson, Esq. and Catherine E. Shively, Esq. for Public Service Company of New Hampshire; Ransmeier and Spellman by Dom S. D'Ambruoso, Esq. for the Business and Industry Association; Mary K. Metcalf for the Campaign for Ratepayers Rights; Paul E. VanMaldegehem, Esq. and Gary A. Enders, Esq. for the Federal Executive Agencies and Department of Defense; Michael W. Holmes, Esq. and Joseph Rogers, Esq. for the Consumer Advocate; Martin C. Rothfelder, Esq. for the Commission and the Commission Staff.

By the COMMISSION:

REPORT

I. PROCEDURAL HISTORY

Page 238

On May 29, 1986, Public Service Company of New Hampshire ("PSNH" or "Company") filed with the Public Utilities Commission of New Hampshire ("Commission") Tariff No. 30 -Electricity, which was designed to increase Non-Energy Revenues by approximately $58.9 million dollars. In addition, the Tariff pages provided for a step increase in annual revenues of approximately $35 million to become effective one year after the effective date of the initial increase. The data supporting the increase was based on a test year ending September 30, 1985. The Company also filed a petition for temporary rates on May 29, 1987. By Supplemental Order No. 18,316 dated June 24, 1986, the Commission suspended PSNH Tariff No. 30 - Electricity pending investigation, and set a hearing for July 18, 1986 to consider temporary rates and to establish a procedural schedule for this case. On July 3, 1986 the Commission granted the Company's request for a continuance of the July 18, 1986 hearing to August 4, 1986. By letter dated July 31, 1986 the Company withdrew its request for temporary rates. At the August 4, 1986 procedural hearing, the Commission received public statements on the proposed rate increase, granted petitions to intervene previously filed by Campaign for Ratepayer's Rights (CRR), United States Department of Defense (DOD), and the Business & Industry Association of New Hampshire (BIA) and recognized the participation of the Consumer Advocate and the Commission Staff. PSNH made an oral motion to bifurcate the rate structure portion of the case

and remit it to a consultative process involving all parties, with a report to be filed with the Commission on December 1, 1986. By Supplemental Order No. 18,375 (71 NH PUC 494) dated August 20, 1986, the Commission issued its procedural schedule for the remainder of the case and denied PSNH's Motion to Bifurcate. The procedural schedule was designed around disposition of the case prior to the bonding date January 1, 1987.

On September 26, 1986, the BIA filed a "Motion to Compel PSNH to Respond to Data Request No. 36 and to Extend Time for the Filing of Direct Testimony and Exhibits of the BIA." Data Request No. 36 requested that PSNH perform a marginal cost of service study, a request with which PSNH agreed to comply by November 10, 1986 in its letter also dated September 26, 1986. By Order No. 18,431 (71 NH PUC 578) on October 6, 1986, the Commission ordered PSNH to submit its study by November 3, 1986 and adjusted the procedural schedule as it related to BIA testimony dependent on Data Request No. 36. The Consumer Advocate's Motion for Rehearing on Order No. 18,431, filed October 15, 1986, was denied on November 12, 1986 by Order No. 18,477 (71 NH PUC 658).

Staff filed a Motion to Compel a response to Staff Data Requests 84-88 (which addressed the issue of the loss on the PSNH system of the UNITIL companies) on October 28, 1986, and a Motion to Require Quantification of an Issue [the UNITIL loss] on November 13, 1986. Following an oral agreement by PSNH to provide quantification of the UNITIL loss, Staff withdrew its Motion to Require Quantification on November 21, 1986. Staff withdrew the portion of its Motion to Compel that requested provision or identification of documents on December l, 1986 after PSNH averred that all information had been provided; the remainder of the Motion was deferred to a separate proceeding.

On November 14, 1986 the Consumer Advocate filed a Motion to Compel Staff to Reply in Full to the Consumer Advocate's Data Request of October 24, 1986, which asked Staff to update the non-Seabrook capital structure calculation performed in Re Public Service Co. of New Hampshire, DR 82-333. Following oral argument on December 2, 1986, the Commission unanimously denied the Consumer Advocate motion on the grounds that the issue should be developed through the Consumer Advocate's own rate of return witness.

At the December 1, 1986 hearing the Commission also accepted a revised

procedural schedule developed to accommodate rebuttal testimony by PSNH on the revenue requirement portion of the case following the hearings on the direct testimony. As such accommodation necessarily extended the case beyond the January 1, 1987 bonding date, the Commission also allowed additional investigation and testimony on the issue of rate design. On December 23, 1986, the Commission issued Report and Fourth Supplemental Order No. 18,523 (71 NH PUC 829) Regarding Rates Subject to Refund and Procedural Matters, which approved a procedural schedule ending in March and the bond offered by PSNH to cover whatever refund would be required in accordance with the final order in this case. On January 1, 1987 PSNH placed into effect the rates of the suspended tariff NHPUC No. 30, pursuant to RSA 378:6.

On December 9, 1986, the Consumer Advocate filed a Motion to Dismiss the PSNH petition for an increase in rates. The Commission decided at the December 9th hearing to take the motion

under advisement and rule at the end of the case. The Consumer Advocate's December 19th Motion for Rehearing was also deferred.

On January 21, 1987, the Consumer Advocate moved to have the Commission review the hearing and procedural schedule in the proceeding, anticipating that PSNH would change its original request to spread the revenue deficiency equiproportionally across all customer classes. The Commission responded on February 9, 1987 in Order No. 18,562 (72 NH PUC 54) that the Consumer Advocate's motion be denied as speculative; however, given its own concerns in regard to the docket's time constraints it established a procedural schedule to include position papers to be filed by all parties on the issue of rate design.

On February 11, 1987, the Consumer Advocate filed a Motion to Consolidate the instant rate case docket with PSNH's January 16, 1987 Petition for Authority to Issue Securities. The Commission denied the Consumer Advocate's Motion by Order No. 18,574 on February 13, 1987 but recalled two PSNH witnesses to explain the relationship, if any, between the rate relief requested in the instant case and the financing.

By Order No. 18,642 (72 NH PUC 153) on April 17, 1987 the Commission denied the Consumer Advocate's Motion to Compel Discovery of February 20, 1987 as moot, the Campaign for Ratepayers Rights (CRR) Motion for Reconsideration of Fourth Supplemental Order No. 18,523 of February 23, 1987, and the Consumer Advocate's Motion for Procedural Order of February 27, 1987; it deferred the Business and Industry Association's April 1, 1987 Motion to Defer Consideration of the NERA Reconciliation Methodology to Another Proceeding. Following oral arguments at the April 23, 1987 hearing, the Commission denied the BIA Motion but noted that it did not mean to limit the possibility that the Commission may at some time initiate a separate docket to investigate the entire issue of marginal cost pricing and reconciliation methodologies.

The Commission addressed other procedural matters concerning hearing dates and witnesses by Order Nos. 18,551, 18,592, 18,632, 18,636 and 18,650.

Public hearings on the Company's proposed rate increase were held in Lancaster on December 16, 1986, Manchester on January 8, 1987, Portsmouth on January 13, 1987, and Keene on January 20, 1987. Evidentiary hearings on the Tariffs commenced on December 1, 1986 and were continued on December 2, 3, 5, 8, 9, and 10, January 6, 7, 8, and 12, March 3, April 15, 16, 17 and 23 and May 6, 7, and 8. At those hearings the Commission heard testimony by witnesses for the Company, the Staff of the Commission, the Consumer Advocate, BIA and the Federal Executive Agencies and Department of Defense.

II. RATE BASE

A. Position of Parties

In its initial filing on May 29, 1986, PSNH based its rate base upon a proformed

average test year ended September 30, 1985. The total company proforma rate base 10proposed was $632,205,000, of which $596,118,000 applied to New Hampshire jurisdictional customers. The following is a summary of the proposed changes to the actual average rate base

for the test year.

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

TOTAL COMPANY NEW HAMPSHIRE

Pro Forma Rate Base $632,205,000 $596,118,000
Actual Rate Base $471,347,000 $415,705,000

Pro Forma Increases $160,858,000 $180,413,000

The proposed adjustments to rate base were made up of the following:

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

Millstone III $119,372,000
Schiller Coal Conversion 29,303,000
Plant Additions 9,705,000
Income Statement Pro Forma 2,478,000

Total Pro Formas $160,858,000

The adjustment for Millstone Unit No. 3 is to reflect the Company's 2.8475% interest in a 1,150 megawatt pressurized water nuclear generating unit located in Waterford, Ct., which began commercial operation on April 23, 1986. The company increased test year electric plant to include the average investment for the first year that the unit would be operating. In addition to the increase in the plant in service account adjustments were made to reflect the annual depreciation accrual associated with the unit and the annual amount of deferred taxes related to tax timing differences between book and tax depreciation. The net difference in these changes is $119,372,000, made up of $122,168,000 of plant in service, offset by $1,499,000 of accumulated depreciation and $1,297,000 of deferred income taxes.

The adjustment for the Schiller Coal Conversion increases rate base by $29,303,000. This proposed pro forma adjustment would reflect the inclusion of the thirteen month average of the Schiller units in plant in service for the year ended September 30, 1986. Prior to this rate case, commencing on July 1, 1985, the company was recovering the costs of conversion of Schiller Units 4, 5 and 6 through the Energy Cost Recovery Mechanism. Due to the fact that oil prices have declined to the point that it is more economical to burn oil at Schiller than it is to burn coal and the cost recovery mechanism was set up to recover costs through savings of coal costs compared to oil costs, the company has requested traditional rate base treatment of the conversion costs.

An additional company adjustment was made to rate base to reflect plant additions 10through June 1986 in the amount of $9,705,000. The proposed additions included the thirteen month average actual additions during the period from October 1985 through February 1986 and budgeted additions for the period from March through June 1986.

The final rate base adjustment proposed by the company reflected an increase of $2,603,000 to the working capital expense allowance due to proforma adjustments to operation and maintenance expense and an increase in deferred income taxes related to the proposed Pre-1971 asset normalization adjustment. A net increase of $2,478,000 was related to income statement pro forma adjustments.

The total increase of $180,413,000 for the New Hampshire jurisdictional customers is

$19,555,000 greater than the total company increase of $160,858,000. This difference is due to the loss of the Unitil companies, who left as a company wholesale customer on October 1, 1986.

Staff Finance Director, Eugene Sullivan,

submitted testimony which proposed a total company rate base of $615,175,432, of which $580,048,895 was applicable to New Hampshire retail ratepayers. That amount varies from the company's proposed rate base by $16,069,105. The differences were in the following areas:

1. Millstone III

2. Schiller

3. Plant Additions

4. Fuel Inventory Adjustment

5. Garvins Falls Tax Lease

6. Working Capital Allowance

1. Millstone

Witness Sullivan testified that the plant cost for Millstone III should be reduced by $3,874,410 to reflect a disallowance for an inefficiency adjustment which was found by the Nielson-Wurster Group in a prudency audit for the Connecticut Department of Public Utility Control. An adjustment of 3.23% was adopted by that agency as recommended by Nielson-Wurster. The parties in this case agreed to resolve this issue based on staff's recommendation on a no prejudice basis. The staff's original proforma rate base adjustment was $115,628,888. That amount has been adjusted to $115,765,235 to reflect the impact on deferred taxes of the blended tax rate of 40% for 1987 tax year. This item has been resolved by the parties to this case.

2. Schiller

Staff witness Sullivan recommended a pro 10forma adjustment to electric plant of $25,147,167. The adjustment reflected the costs which were included in the settlement agreement as provided in "Recommendations of the Parties Regarding Resolution of the Schiller Conversion Issues" which was accepted and adopted by the Commission in its Order No. 17,728 (70 NH PUC 622). Staff also recommended that costs as of December 1986 be used instead of an average rate base. It was claimed that the company has been allowed to collect depreciation through the ECRM mechanism until January 1, 1987 and the amounts at that point should be used on an on going basis.

The parties have agreed to resolve the issue of the cost of delays in conversions and to defer resolution until a later case. The company disagrees with the staff's yearend position and claims that the "thirteenmonth" average of the Schiller Project in electric plant in service should be used. They claim that the rate base treatment should be consistent with the conventional thirteen-month average rate base treatment of adjustments to plant in service approved by this Commission and it would also be consistent with the treatment of the return on the investment in

ECRM. The company has, however, changed its original position from an average rate base ending September 30, 1986 to an average rate base ending December 31, 1986. In his rebuttal testimony, company witness Wiggett took the position that the average rate base would be picked up at that point and moved forward on the basis that the ECRM mechanism allowed recovery of the return component through December 31, 1986. The company also claims that a change to the use of a year-end rate base would result in a loss of revenue recoverable as a return on the investment. Witness Wiggett supplied Exhibit 34, Attachment 1, to illustrate the loss of revenue. The company finally makes the point that staff's treatment differs from "the usual thirteen-month average rate base treatment" recommended by staff to the Commission.

Mr. Sullivan, in his rebuttal testimony, argued that the Schiller cost conversion should be treated differently because the Company was guaranteed recovery of its costs through ECRM and that treatment is "far more than the usual `opportunity to earn'." He also stated that rate base would be overstated by including past recoveries on an average

Page 242

basis. The average would not reflect the fact that the Company had recovered costs until the ECRM mechanism was changed in January 1987.

3. Plant Additions

Staff witness Sullivan adjusted rate base to reflect actual plant additions through June 1986 by $7,077,521, which is $2,627,479 less than the company's original filing. As a result of discussions among the parties this issue was resolved. Staff has amended its amount to $7,088,200 to reflect reduced deferred income taxes as a result of the corporate tax change from 46% to a blended rate of 40% for 1987. The amount in the company's brief has been rounded to $7,089,000, while staff's calculation is not rounded.

4. Fuel Inventory Adjustment

Staff testified that the average fuel inventory should be adjusted to reflect more closely the recent reduction in fuel costs. The proposed reduction was $2,287,700. The company filed a revision to update the materials and supplies inventory by reducing the original filing to reflect the average material and supplies inventory for the year ended September 1986. All of the parties resolved this issue by reducing test year materials and supplies inventory by $977,112.

5. Garvins Falls Tax Lease

In its original filing the company had deducted the total amount of the Garvins Falls Tax Lease in the amount of $1,794,000. That treatment was consistent with our last rate case decision in Docket No. DR 82-333, which was made contingent on a request for a private letter ruling from the Internal Revenue Service (IRS). As a result of the IRS private letter ruling staff added $588,831 to rate base to reflect amounts applicable to investment tax credits and energy credits. Therefore, the average balance of the adjustment ($1,235,289) related to deferred taxes for accelerated depreciation were retained as a rate base deduction. This issue was resolved by all of the parties to this case.

6. Working Capital Allowance

The staff witness and the company witness used the 45 day method to arrive at a working capital allowance. Due to the fact that the 45 day method is based upon a percentage of operation and maintenance expense (12.5%), the adjustment to rate base is contingent upon the pro forma operation and maintenance expense, less purchased power. Based upon staff's pro forma adjustments to operation and maintenance expense, the working capital allowance would be $32,282,381, or 12.5% of $258,259,048.

B. Commission Analysis

[1] Two basic issues have not been resolved by the parties. Those issues are whether to use a thirteen month average or a year end methodology to calculate the Schiller adjustment and to determine if a rate base adjustment to accumulated deferred taxes as a result of tax reform is appropriate.

The Commission has reviewed the record in this case and is aware of the treatment that has been used in the recent past to recover the costs of coal conversion. The Company has been allowed to recover the costs of coal conversion. The Company has been allowed to recover its depreciation expense and a return allowance through the energy cost recovery mechanism (ECRM). In fact, recovery of the unrecovered return allowance has been included in ECRM for the period January l, 1987 through June 30, 1987. While we recognize the position of the staff witness has some validity, we will accept the Company's thirteen month average methodology. This Commission has adopted the thirteen month average standard in the past. Our filing rules require the thirteen month average to be used for rate case filings. We will use the average

rate base for the period ending December 31, 1986. The use of that period will coincide with a change from recovery through ECRM to traditional rate base treatment.

The Company's position that the return component of ECRM was calculated on a rolling thirteen month average is valid as Commission records attest. It is also true that the thirteen month average includes deferred taxes on the Schiller conversion which were not included as part of the stipulation of the parties in the Schiller Coal Conversion case. In our judgement the use of updated average rate base will provide a closer matching of revenues and expenses than the use of a year end test year. The average test year rate base will be adjusted by $22,659,623; including additional plant in service in the amount of $25,146,982, additional accumulated depreciation in the amount of $2,725,598 and a reduction in accumulated deferred taxes of $238,239.

[2] The final adjustment to rate base which PSNH claims should be made is an adjustment to accumulated deferred taxes to reflect the impact of applying the Tax Reform Act of 1986 to the pro forma income statement. A decrease of $1,531,000 is claimed by the Company. That amount would result from the change in deferred income tax expense required by the change in the effective federal income tax rate. It is further claimed that the method employed by the Company would be consistent with past treatment by this Commission.

The staff's position is that changes in deferred taxes do not change the deferred taxes that have accumulated during the test year and are used in the calculation of the thirteen month

average rate base. Staff claims that the change in the tax rate will occur in 1987 and will change the amount of taxes which will be deferred in the future. The Company states that this position is inconsistent with past Commission practice. They cite Docket No. 79-787 in which full normalization of tax timing differences for assets placed in service subsequent to 1970 was requested and allowed. In that order, the Commission changed its approach of taking deferred taxes as a rate base deduction to including deferred taxes in the capital structure as zero cost capital. PSNH claims that the concept was the same and the customer was compensated for the use of funds paid to the Company through deferred income taxes. In that case the deferred taxes on the books at the end of the test year were adjusted to include an adjustment to deferred taxes as a result of a full normalization adjustment to the pro forma income statement. The Company argues that the situation in DR 79-187 is the same as the current situation, "except that in DR 79-187 the tax rate was increasing, while in this case the tax rate is decreasing." That assertion is incorrect. The tax rate decreased from 48% in 1978 to 46% in 1979. In both cases the tax rate was decreasing.

The Commission has thoroughly reviewed the records in this case and in Docket DR 79-187. The monthly operating statements and the annual reports of the Company have also been reviewed. Based upon our review, we will accept staff's position on this adjustment. It is improper to adjust the average rate base by the change in deferred income taxes resulting from the tax rate changes initiated by the Tax Reform Act of 1986. The tax change is being implemented on January 1, 1987. The changes which have been included in the pro forma income statement will not be reflected in the company's balance sheet until January 1987, sixteen months after the end of the test year. In fact, deferred taxes have increased from $51,309,483 as of September 30, 1985 to $67,515,015 as of December 31, 1986. During that time period deferred taxes have been accumulated at a federal income tax rate of 46%. Deferred taxes at a lower level due to the change in 1987 to a blended tax of 40% will not start to accumulate until 1987 when the rates are in effect. To reflect that change in rate base would violate the matching principle which this Commission has followed in the past. The contested item does not effect rate base. It does effect the level at which deferred taxes will be booked in the future. The concept of

the pro forma test period is to adjust the test year operating statement for known and measurable changes which will occur in the future.

A review of the decision in Docket DR 79-187 does not confirm that the treatment of deferred taxes proposed by the staff is inconsistent in this case. In DR 79-187 deferred taxes were included in the capital structure in order to reflect the impact of all deferred taxes in the revenue requirement. The Commission used a capital structure as of September 30, 1979. As in the current case the Commission was attempting to use an up-to-date capital structure to reflect the cost of capital that will be effective during the pendency of the final rates. We do not view the current case as similar to DR 79-187. The change that was made to the method of booking the allowance for funds used during construction (AFUDC) from the gross method to the net method has removed a large amount of deferred taxes from the Company's books. Therefore, it would not be consistent in this case to include deferred taxes in the capital structure at zero cost.

Based upon the foregoing analysis, the rate base calculation is as follows:

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

RATE BASE
THIRTEEN MONTH AVERAGE
TEST YEAR ENDED SEPTEMBER 30, 1985

	AVERAGE 9/30/85	PRO FORMA ADJUSTMENTS	RATE BASE
Electric Plant in Service	690,826,404	150,664,670	841,491,074
Less: Accumulated Depreciation	224,818,470	4,241,365	229,059,835
Plus: Plant held for future use	198,881	198,881	
: Androscoggin River	50,000		50,000
Net Utility Plant	466,256,815	146,423,305	612,680,120
Plus: Expense Allowance	29,957,373	2,325,009	32,282,382
Material & Supplies	24,153,917	(977,112)	23,176,805
Prepayments	2,172,852	2,172,852	
Less: Deferred Taxes	45,893,846	910,247	46,804,094
Customer Deposits	1,943,157	1,943,157	
Customer Advances	36,689	36,689	
Accumulated Def. ITC	1,429,388	1,429,388	
Sale of Tax Benefits	1,794,120	1,235,289	558,831
Rate Base	471,443,757	148,096,243	619,540,000

III. NET OPERATING INCOME

A. Position of the Parties

In its initial filing the Company claimed net operating income of $87,370,000 on a total Company basis, of which $80,048,000 was applicable to the New Hampshire retail jurisdiction. The proposed pro forma adjustments reduced total net operating income to $71,891,000, of which $69,338,000 was applicable to the New Hampshire jurisdiction. Pro forma adjustments in the amount of $15,479,000 were made to arrive at the 71,891,000 adjusted net operating income on a total Company basis. Adjustments of $11,795,000 were associated with the income statement and $3,683,000 were expense adjustments related to pro

forma rate base adjustments. The adjustments to expenses due to rate base were due to the inclusion of Millstone 3, Schiller Coal Conversion and plant additions.

Staff witness Sullivan proposed a pro forma net operating income of $80,182,591. In addition to some adjustments which were different from the Company's adjustments, Staff included adjustments which reflected the effects of the Tax Reform Act of 1986 (TRA 86). By applying a blended tax rate of 40% to the actual results for the testyear Staff adjusted net operating income by $4,708,000 to $92,078,800. Staff then adjusted net operating income by $11,896,209 to arrive at an adjusted operating income of $80,182,591. The New Hampshire portion of net utility operating income was derived by using the Company's jurisdictional separation study. All of Staff's pro forma adjustments used a blended federal income tax rate of 40% which the witness claimed would be the tax rate which would be in effect during the time the rates would be effective.

The parties to this case met initially on December 1, 1986 to clarify and narrow the issues. An agreement was reached on certain issues, resulting in a Report of the Parties Regarding Clarification and Narrowing of Issues (Exhibit 19). The parties reached agreement on certain issues which impact both net operating income and rate base. Those issues included the following impacts on net operating income:

1. Millstone 3 - PSNH has agreed to adjust its original pro forma by using the latest available data provided by Northeast Utilities for decommissioning costs and operation and maintenance expense. The adjustment of $3,017,529 reflects those changes in addition to a change in the federal income tax rate. Depreciation expense has been changed to reflect a 3.23% adjustment to plant costs with the understanding that the adjustment is accepted by PSNH without prejudice and is not to be used as a precedent for any purpose in a future case. 2. Effect of 1986 Tax Reform Act - The parties agreed that this case should reflect the effect of the 1986 Tax Reform Act. PSNH agreed to submit a new pro forma adjustment to capture all effects of the tax reform on the revenue requirement. All parties have agreed to accept a decrease of $4,822,211 to reflect the tax adjustment. Left unresolved was the matter of the treatment of an adjustment to accumulated deferred taxes resulting from tax reform and the flow back of excess deferred taxes which were accumulated in the past at higher federal income tax ratios. The latter issues will be addressed in other sections of this report. 3. Impact of UNITIL Termination - The parties have agreed to defer this issue to a subsequent case and recommend that any revenue allowed in this case which is attributable to the termination be subject to refund. PSNH agreed to quantify the impact of the terminations. The quantification will be discussed later in this report.

As a result of further discussions and hearings, the Report of the Parties was supplemented by reports on the status of issues which were filed by PSNH on May 4 and May 20, 1987. Those reports represent substantial effort on the part of Staff and the parties to narrow the issues in this case which require Commission decision. The following summarizes the issues which have been resolved by the parties related to net operating income.

Page 246

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

	Original Filing	Issues Resolved
Actual Net Operating Income	$87,370,000	$87,370,000
Resolved Issues:		
Tax Reform Act of 1986	-0-	4,822,211
NH Retail Sales Revenue	(563,000)	(625,919)
Resale Service Revenue	(19,456,000)	(21,618,135)
Transmission Service Revenue	2,186,000	2,428,806
Purchased Power Capacity	5,205,000	5,783,553
Fuel & Purchased Power Expense	10,988,000	12,208,989
Hydro Quebec-Phase I	(2,163,000)	(1,278,912)
Deferred Fuel Costs	(313,000)	(348,000)
Real Estate Tax Expense	142,000	157,994
Public Utility Assessment	(225,000)	(209,949)
Computer Equipment Lease	(380,000)	(422,234)
Insurance Expense	(948,000)	(1,053,107)
Hurricane Gloria	(363,000)	(390,801)
N.H. Business Profits Tax	238,000	-0
Revenue Adjustment		
- Plant Additions	-0-	1,965,947


```
Millstone III (2,762,000)  (3,017,529)
Schiller (791,000)  (923,247)
Plant Additions (130,000)  (102,179)
Net Operating Income $78,035,000  $84,747,488
```

The original filed amounts vary from the resolved amounts in the following categories by adjustments to taxes due to tax reform: N. H. Retail Sales Revenue, Resale Service Revenue, Transmission Service Revenue, Purchased Power Capacity, Fuel and Purchased Power Expense, Deferred Fuel Costs, Real Estate Tax Expense, Computer Equipment Lease, and Insurance Expense.

The Tax Reform Act of 1986 reflects the resolution of the impact of tax reform. This issue was raised by the Staff in its original testimony and the resolution results in taxes being restated at a blended federal income tax rate of 40% which is the effective tax rate for companies with calendar year reporting periods. The 40% results from a 46% rate being effective from January 1, 1987 to July 1, 1987 and a 34% rate effective from July 1, 1987. For 1988 the rate will be 34%. The 40% rate was used because the rates would be in effect during 1987.

Hydro Quebec-Phase I reflects more recent cost estimates, a revised depreciation life and adjustments to taxes due to the Tax Reform Act of 1986. The Public Utility Assessment amount reflects the actual assessment for the pro forma test year and the effects of tax reform. The Hurricane Gloria reflects an adjustment to the originally filed amount to reflect the capitalization of a portion of the costs and the effects of tax reform. The adjustment for the New Hampshire Business Profits Tax adjustment is no longer required as the change was incorporated into the Tax Reform Act of 1986 adjustment.

The revenue adjustment for plant additions to rate base reflects the staff's position that additional revenues would be received as a result of growth in customers related to the inclusion of additional plant in rate base. The Millstone adjustment has been resolved to reflect updates to decommissioning costs, operation and maintenance expense, a revised plant amount and tax

reform.

The Schiller adjustment that has been resolved reflects an agreement between PSNH and the staff to defer the issue of Coal Conversion cost delays until a subsequent case and adjustments due to tax reform. The issues which have been resolved do not include the Company's acceptance of staff's proposed year-end rate base methodology. The adjustment for plant additions has been resolved by using actual plant additions through June, 1986, rather than estimates which were included in the Company's original filing, and the effects of tax reform.

B. Commission Analysis

After reviewing the resolved issues the Commission will accept the agreement of the parties to this case.

There are five areas of dispute between PSNH and the staff which need to be addressed. We will address these issues individually.

1. Flowback of Excess Deferred Taxes

As a result of the Tax Reform Act of 1986 the federal income tax rate changes from 46% to 34% effective July 1, 1987. The change results in a blended tax rate of 40% for 1987 and a rate of 34% in 1988. The Company has accumulated deferred income taxes on its regulated books at tax rates of 48% and 46%. The taxes which have been deferred in the past will be paid back at a lower rate; 40% in 1987 and 34% in 1988 and thereafter. Therefore, excess deferred taxes have been accumulated by PSNH and other utilities. The Tax Reform Act of 1986 requires that the excess tax reserves resulting from the reduction of corporate income tax rates which result from prior depreciation taken on assets placed in service under the Accelerated Cost Recovery System before 1987 must be normalized. If the excess tax reserve is reduced faster than or to a greater extent than the reserve would be reduced under the "average rate assumption method", the utility would not be considered to be using a normalization method of accounting for tax purposes with respect to any of its assets. The average rate assumption method is the method that reduces the excess deferred tax reserves over the remaining regulatory lives of the property which gave rise to the reserve for deferred taxes.

Finance Director Sullivan testified in his original testimony only to the effect of the change in the tax rate. He did, however, attempt an approximation of the amount of excess deferred taxes that should be returned to ratepayers. The amount of flow back that was calculated was $243,415 for 25 years based upon the 1987 blended tax rate of 40%. Witness Sullivan did not include this flowback in his original testimony. He testified that the Commission should not accept the Company's adjustment for pre-1971 normalization because the flowback would more than compensate for any pre-1971 tax differences. The Company filed technical statements during the pendency of the hearings which identified the impact of the Tax Reform Act of 1986 on the test year revenue requirements. They stated that a very detailed analysis of the deferred tax accounts was required and that the results would be filed with the Commission. The Company completed its study and filed the results, of that study as exhibit 48. The study itself was presented to staff and is a part of the Commission files.

The Company attempted to determine the appropriate flowback period and the amount of that flowback. They contacted the EEI Taxation Committee which was reviewing the problem of complying with the requirements of Section 203(e) of the 1986 Tax Reform Act. Exhibit 48 states that information from the EEI Taxation Committee indicates that the "Reverse South Georgia Method" of calculating flowback may be acceptable to the Treasury Department because that method "would be deemed not to reduce the excess tax reserve method more rapidly than the average rate assumption method and would therefore satisfy the normalization requirements of Section 203(e) of the TRA of 1986." The Company claims

Page 248

---

that the "Reverse South Georgia Method" determines the excess deferred taxes as of January 1, 1987 and determines the flow- back period by calculating the average remaining life of the assets which gave rise to the excess deferred taxes. The study arrived at an average remaining life of 24 years. Therefore, based on its study, the Company proposed to accept Mr. Sullivan's original estimate on the basis that it would be consistent with the "Reverse South Georgia Method".

A technical statement (Exhibit 85) was filed by the staff witness which stated that its original estimate of the excess deferred taxes was conservative and understated the amount of flowback. After reviewing the Company's study it was testified that the amount of flowback should be $324,382. Staff calculated an average life of assets at 21.72 years based upon plant in service as of December 31, 1985. The variance is attributable to the points in time at which the determination is made.

Staff's calculation is based upon a point in time that is closer to the test year and the amount of deferred taxes that he uses to determine the excess does not include deferred taxes accumulated after the test year. Plant additions after the test year have not been included in staff's calculation of average service life. The Commission will accept staff's position because it more closely matches Company records for the test year. We are concerned that the excess tax reserves should be returned to the ratepayers while complying with the normalization rules of the IRS Code. The amount of this adjustment is for ratemaking purposes only. The Commission will require the Company to calculate the exact amounts for periods beginning on January 1, 1987 and beyond. Beginning in January 1988 we will expect the amount of excess deferred taxes to be booked to reflect the 34% income tax rate. The amount used by Mr. Sullivan reflects a 40% rate for 1987. Therefore, the flowback in 1988 would be larger. We will expect calculations of the 1988 flowback amount to be filed with the Commission.

2. Overtime Payroll

The Company submitted a payroll adjustment of $5,699,000. Staff proposed an adjustment of $5,553,284. Both parties agree on the additional base payroll expense amounts. The only area in dispute is the adjustment to overtime payroll expense. Staff proposes an increase of $73,900, compared to an increase of $189,000 proposed by the Company.

The Company in its brief, claims that the methodology which it used was the same methodology that the Commission had previously found to be most accurate. They further claim that the method was agreed upon and accepted in the Report of the Parties in Docket DR 82-333. The Company compares actual overtime payroll at the end of the test year with annual base payroll at the beginning of the test year to arrive at a percentage. The percentage is applied to the annual base payroll at the end of the test year to determine an estimate for the proformed test period. Staff compares actual overtime payroll for the test year to the annual base payroll at the end of the test period in order to arrive at a percentage. The Company claims that staff methodology understates the percentage because the base payroll at the end of the test year includes increases and is at a higher level than the test year payroll.

A review of the stipulation agreement in Docket DR 82-333 does not confirm the Company's contention that their methodology was adopted. In that case, the actual overtime payroll expense was the amount which was adopted. After reviewing the positions of the parties, we find that both PSNH and staff's methods are flawed. Neither party considers the actual overtime expense in relation to the actual payroll during the same periods, which we expect would derive a more correct relationship. Further, both parties have failed to determine the exact amounts of overtime expense that are attributable to operation and maintenance expense and construction. In the future, we will expect the overtime

expense to be calculated in a more concise manner. As there is nothing in the record to develop the proper adjustment to overtime expense, the Commission will adopt an adjustment of $131,500.

3. Major Maintenance Expense

[3] Another area of disagreement between the Company and the staff involves the adjustment of major maintenance expense PSNH proposed a pro forma adjustment of $4,994,000. Staff proposed a pro forma adjustment of $2,656,458, which reflected twelve months of actual data through September 1986 adjusted for a 40% fed- eral tax rate.

The Company contends that its proposed adjustment is less than it actually spent in 1986 and less than has been budgeted for 1987. In its brief, the Company states the position that its pro forma adjustment is representative of major maintenance expense to be incurred during the period the rates will be in effect (PSNH Trial Brief, page 12).

Based upon a review of the record in this case, the adjustment proposed by PSNH will be accepted. After adjusting for taxes the impact upon net operating income is an increase in expense of $2,749,197. In previous decisions we have affirmed, the policy of allowing adjustments based upon known and measurable changes which occur during the twelve months following the test year. Because the test year data, as filed, was already stale and due to the fact that the record indicates higher expenses, the Company's adjustment will be adopted for the purposes of this case. In the future, we will expect actual data to be more current.

4. Pre-1971 Normalization

[i] The Company proposed an adjustment in the amount of $251,000 to provide for normalization of plant additions made prior to 1971. As a result of the incorporation of the charges due to the Tax Reform Act of 1986, the Company has revised its estimate to $177,000. It is claimed that this adjustment would result in moving the Company to full normalization. In Docket No. DR 79-187 this Commission allowed the Company to implement full normalization on post-1970 plant additions, even though that methodology could have been adopted in 1970.

The Company states that it has implemented full normalization as a result of a recent Federal Energy Regulatory Commission (FERC) audit which fulfilled the mandate of FERC Order 144 requiring utilities to implement full tax normalization for all timing differences. They further claim that "to do otherwise would have violated FERC accounting requirements." The Company further claims that this Commission has accepted the FERC classification of accounts and FERC accounting standards.

Staff witness Sullivan recommended that full normalization of pre-1971 tax timing differences not be allowed by this Commission. He pointed out that this Commission required a "flow-through method" of accounting for tax timing differences prior to 1970 and allowed utilities the option of adopting normalization after the passage of the 1969 Tax Reform Act. He pointed out that any higher tax liability for pre-1971 assets would be compensated for when a tax reconciliation is calculated for ratemaking purposes. The Company claims that the higher tax expense which will occur over the remaining lives of the pre-1971 assets must be recovered now that timing differences have turned around. Staff claims that these differences will be reflected in

actual taxes in the cost of service.

This Commission has been very concerned with the amount of excess deferred taxes that have been accumulated by utilities prior to the passage of the 1986 Tax Reform Act. If full normalization had been in effect over the life of the pre-1971 assets, additional amounts of excess deferred taxes would have been accumulated. Furthermore, deferred taxes have been accumulated at a tax rate of 48% during the years 1971 through 1978. Earlier in this decision we have allowed the Company to

amortize the excess deferred taxes which were accumulated at higher rates over the remaining lives of those assets. Although the Company argues that the new tax law requires that excess deferred taxes must not be flowed back faster than the "average rate assumption" method, it is our understanding that the law applies to ACRS assets. ACRS assets cover additions after 1981 and do not refer to deferred taxes which were accumulated at 48%.

When this Commission adopted the FERC chart of accounts in 1970 it did not adopt all of the changes in FERC accounting standards which took place after that date. FERC audits are related to their wholesale jurisdiction and the records in this case show that FERC has jurisdiction over only approximately 10% of PSNH's business since UNITIL has left as a wholesale customer.

This Commission will adopt the position of staff for this adjustment. In addition we would observe that the Company has adopted a policy of extending the lives of some of its older units. To adopt the Company's position would result in overstating the amount of this adjustment as proposed. We will not adopt normalization for pre-1971 assets. The actual book depreciation expense for those assets will be used for calculating taxes in the cost of service.

5. Cost of Purchased Capacity

PSNH proposed a pro forma adjustment for additional capacity requirements in the amount of $1,200,000, based upon the purchase of 27.27 MW of capacity at $44.1 per KW year. Staff proposed an adjustment of $1,145,340 to reflect the exclusion of an estimated 5% increase in actual costs as reflected in data response (Staff Set 1,]31).

The Company argues that the amount that was used is appropriate because it is currently the price that it is paying for intermittent oil fired capacity. They further claim that by purchasing intermediate oil fired capacity rather than jet capacity they are lowing ECRM charges by using more efficient units that burn lower cost fuel. They further contend that customers energy costs will be reduced by $2.0 million over the period November 1986 — April 1987.

As the record indicates PSNH is currently paying more than the proposed adjustment. We will accept the Company pro forma adjustment of $660,600 after taxes.

One additional adjustment is required to reflect the Commission's decision to accept the average rate base treatment for the Schiller Coal Conversion as of December 31, 1986. The deferred taxes are reduced by $225,720 to reflect the lower accumulative deferred taxes as a result of comparing the Depreciation Expense for the months of January 1986 to December 1986 and October 1984 to September 1984.

The Company in its original filing had compared deferred taxes related to depreciation for the period October 1986 to September 1986 to the period of October 1984 to September 1985.

Based upon the foregoing analysis we will adopt a pro forma net operating income of $78,790,662 for the total company, as follows:

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

Net Operating Income Resolved $84,747,488
Unresolved Issues:
Flowback of Excess Deferred
Taxes 324,382
Payroll Expense (3,097,131)
Major Maintenance Expense (2,749,197)
Deferred Tax Changes Related
to Schiller Rate Base
Adjustment 225,720
Pre-1971 Normalization - 0
Cost of Purchased Capacity (660,600)
Adjusted Net Operating Income $78,790,662

Page 251

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

TOTAL COMPANY NET OPERATING INCOME
FOR TWELVE MONTHS ENDED SEPTEMBER 30, 1985

Operating Revenues $483,622,202
Operating Expenses 317,570,064
Other Operating Expenses (256,000)
Depreciation 28,940,059
Investment Tax Credits (466,000)
Federal Income Taxes 22,166,385
Deferred Income Taxes 11,090,474
N.H. Franchise Tax 4,233,630
N.H. Business Profits Tax 556,086
Other Taxes 20,854,842
Total Operating Expense 404,689,540
Net Operating Income 78,932,662
Less Adjustments:
Depreciation 2,000
Donations 8,000
Return on Deposits 132,000

Adjusted Net Operating Income $78,790,662

IV. CAPITAL STRUCTURE AND COST OF CAPITAL

Testimony on the appropriate capital structure was presented by PSNH, the Consumer Advocate and Staff; testimony on the cost of capital, equity, debt and preferred stock, was offered by PSNH and Staff. The Consumer Advocate, in his brief, supported the Staff calculations for equity, but his position on capital structure affects his calculation of the overall costs of debt and preferred as it removes certain capital issues from the weighted average. CRR supported the rate of return position of the Consumer Advocate. The BIA, DOD and did not present testimony or argument on capital structure or cost of capital.

A. Capital Structure

1. Position of the Parties

PSNH, through its witnesses Professor J. Peter Williamson and Bruce W. Wiggett support the following capital structure:

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

Common Equity $1,028,741,000 37.57%
Preferred Stock 321,551,000 11.74
Long Term Debt 1,387,791,000 50.69
Total Capitalization 2,738,083,000 100.00

In Wiggett's Schedules, this capital structure is the calculation of the actual capital structure as of September 30, 1985 (the end of the test year) proformed to reflect the maturity of First Mortgage Bond Series 1 in June 1986 and Promissory Notes BV and NV in August 1986 and the issuance of the Deferred Interest Third Mortgage Bonds Series A and $100 Million of Pollution Control Revenue Bonds in February 1986. Williamson terms the proposed capital structure appropriate for ratemaking purposes, although "a little high on longterm debt and a little short on common equity" (Exhibit 1, Tab. 6, p. 21) in comparison with the electric industry. The

Page 252

Company does not record the June 1986 writeoff of the $353,521,000 investments in Seabrook II and Pilgrim II, or implicitly, treats the write-off as if it occurred equiproportionally against all components of the capital structure and did not change the component ratios. PSNH adopts this treatment of the write-off because a write-off only against common equity lowers the common equity ratio and thereby lowers the overall cost of capital assuming, as the Company argues, the return on equity exceeds the embedded cost of debt.

The Company argues that the Commission has the authority to adopt a capital structure for ratemaking purposes different from the capital structure as shown on the books of the Company. In particular, it cites various rate cases of the New Hampshire Electric Cooperative as well as PSNH's last rate case, in which the Commission approved the use of "target ratios" rather than an actual capital structure. PSNH concludes that to reduce the allowed rate of return on existing rate base by adjustments to the component ratios of the capital structure when substantial amounts of uncompleted plant are written off is to further weaken the financial integrity of a Company that has just suffered the write-off.

Staff through its witness, Dr. Sarah P. Voll, proposes the following capital structure (Ex. 49, Att. 1, p. 1)

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

Common Equity $2,817,137,738 132.14%
Preferred Stock $2,312,127,087 112.28%
Long Term Debt $1,412,924,904 155.58%
Total Capitalization $2,542,189,729 100.00%

Staff's capital structure represents the Company's actual capital structure as of August 31, 1986 as it appears on the books of the Company, adjusted for unamortized premiums and discounts. It therefore includes not only the additions and deletions of capital issues as proformed by the Company, but the write-off of the Seabrook II and Pilgrim II investments against retained earnings. Staff contends that the accounting standards require that cancelled

plant be written off against retained earnings, in part since prior to a plant being used and useful the investment is made at the stockholders' risk. Staff argues then that its proposed capital structure best reflects the reality of the events that affected the Company's capital structure through August 1986.

2. Commission Analysis

[4] The Commission agrees with the Company that we have the authority to adopt for ratemaking purposes a capital structure different from that which appears on the Company's books at any given time. In general, however, the Commission adopts a hypothetical capital structure either to reflect more accurately the general reality of the period during which the rates will be in effect, or to encourage the utility to conform this reality to a desired optimum. The Commission's acceptance of "target ratios" in the last rate case was an example of the former case. During the period while the rates were in effect, the "target ratios" were expected to represent, on average, the Company's capital structure more closely than any instantaneous set of capital ratios taken at any particular point during the Company's financing program.[1(73)]

The Company's proposal in the instant case is founded on neither of the reasons the Commission has in the past adopted hypothetical capital structures. It does not accurately reflect an expected reality, as PSNH has in fact written off the cancelled plant against common equity. The debt issues remain intact in the Company's capital structure as on-going obligations of the Company, regardless of the reduction to rate base. Nor will a hypothetical capital structure serve to encourage PSNH to move in an optimal direction, in this case to increase the equity component in its capital structure. Professor Williamson has testified that "the Company has found new offerings of common or preferred stock not to be practical until dividends are restored" (Ex. 31, p. 18); and Staff apparently agrees: "PSNH has no intention of raising capital

through offerings of common stock until the stock price has substantially recovered." (Voll, Ex. 13, p. 16). In addition, the Company's argument that reductions in the allowed rate of return should not be allowed to further weaken the financial integrity of a Company that has just suffered a writeoff depends on the relationship between the Company's embedded cost of debt and marginal cost of equity. Where a Company's embedded cost of debt is heavily weighted by financings that were issued in periods of high interest rates, its marginal cost of equity reflecting a period of lower interest rates will not necessarily exceed the debt costs. Therefore, a lower equity component ratio will not necessarily result in a lower overall allowed rate of return and a further weakening of the Company's financial integrity.

We do not find that the Company has presented sufficient evidence or argument to cause us to adopt a hypothetical capital structure in the instant case. We find that the Staff recommendation best represents the reality of the PSNH capital structure and will accept it for purposes of this docket.

B. Cost of Capital Debt and Preferred Stock

1. Position of the Parties

The Company recommended costs of debt and preferred stock based on the weighted

averages of the issues in its proformed capital structure, calculated according to a yield to maturity methodology. The results, as updated, were 13.41% on preferred stock and 15.18% on long term debt: (Ex. 33, Sch. IV, p. 2; Sch. V, p. 4.)

Staff, using the accounting based embedded methodology as adopted by the Commission in DR 77-49, Re Public Service Co. of New Hampshire, obtains results of 13.28% on preferred stock and 15.28% on long term debt. Ex, 49, p. 3 and Att. 1, pp. 1-3. In addition, Staff noted that it views the current rate case as a pre-Seabrook interim rate case and the prudency of the debt financings is being examined by the Commission as part of the Seabrook prudency audit. Staff therefore recommended that its calculations be adopted subject to refund pending the outcome of the Commission deliberations in the Seabrook rate case.

Given that the results of the two methodologies were very similar, the parties agreed to accept Staff's results without prejudice, although PSNH does not accept Staff's methodology to the exclusion of PSNH's method in calculating the costs of debt and preferred stock.

2. Commission Analysis

The Commission finds the agreement of the parties reasonable given the similarity of the results in this docket. We will defer findings on appropriate methodologies in the calculation of the cost of debt and preferred stock to a future rate case.

The Commission notes the Staff recommendation that its calculations be adopted subject to refund. The Commission also views the current rate case as an interim rate case. Our orders cited by Staff were premised on the assumption that the next rate case would be the Seabrook rate case and that the prudency of the cost rates would be determined concurrently with the prudency of the entire Seabrook investment. Our acceptance of the Staff calculations in this interim case should not be viewed as a finding on the prudency of the cost rates on the Seabrook related debt issues. Rather, that prudency determination will be made when the Seabrook investment is rate based, and we intend to reconcile all issues of prudency at that time.

The Commission unanimously agreed that cost rates imprudently incurred must be refunded to ratepayers, but reach an impass on the method to implement the refund. The problem developed from the Commission, in previous decision dating back to 1982, deferring the prudency issue until a thorough prudency review of the construction project was concluded. When those decisions were made, everyone contemplated

---

the next rate case to be the prudency case. No one has yet developed a record to determine any imprudency or quantify same. In fact, the Commission is currently utilizing a consultant to assist it as the prudency docket is processed.

The Commission is confronted in this rate case with the requirement of RSA 378:6 which mandates that permanent rates be filed by June 30, 1987. To fix rates one day and the next day declare those rates as temporary rates is not an appropriate method to employ and is subject to be attacked as a ploy by the Commission to circumvent the requirement of RSA 378:6.

The majority of the Commission is convinced that the Company was on notice before this hearing and during the course of this hearing that the questions of prudency would be deferred

until a prudency hearing was conducted. We believe that fairness and equity dictates that it be done after a full and complete hearing. If the parties had an objection to this procedure, they had the opportunity to address it. They did not; therefore, we are confident that making the rates of this proceeding subject to refund for the limited purpose of determining what portion of the costs rates for debt was imprudent is proper, fair and equitable. The dissenting view would not eliminate the problem of retroactive ratemaking. The majority's objective is to defer the issue until a full prudency hearing can be concluded. The difference of opinion between the majority and the dissent is in adopting the proper methodology.

C. Cost of Capital - Common Equity

1. Position of Parties

Public Service Company recommended a return on equity of 19% based on the direct, supplementary and rebuttal testimony of its witnesses Prof. J. Peter Williamson and Robert G. Rosenberg and the rebuttal testimony of Daniel P. Rudakis.

Williamson estimates PSNH's cost of equity using a risk premium methodology. In his December update (Exh. 8) he reaffirms his earlier finding of 19% using the same methodology as in his original testimony. He calculates risk premiums of PSNH debt instruments above Baa Yields by comparing PSNH prices and yields to maturity to the Moody's Baa average. He derives a premium for preferred stock by using a discounted cash flow under varying assumptions of the resumption of dividend payments on preferred stock. His results are as follows:

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

First Mortgage Bonds
Baa yield + 1 to 1 1/2% = 10.8% to 11.3%
G&R Bonds
Baa yield + 4% = 13.5%
Debentures
Baa yield + 4.5% = 14.3%
Preferred Stock
baa yield + 8 to 10% = 17.1% to 19.1%
```

Williamson then places a conservative estimate of the cost of common equity at 18-20%, 100 basis points above the cost of preferred, and recommends 19% as the mid-point.

Rosenberg estimates the cost of common equity using a discounted cash flow (DCF) methodology based on a sample of 30 nuclear constructing companies as 13.30%. Exh. 27, p. 3. He then develops two risk premiums to measure the risk differential between PSNH and the sample by comparing the yields on their first mortgage bonds (4.92 — 5.30) and on their most junior securities (4.88 — 5.01). Therefore, his two analyses result in the following ranges: 18.22 — 18.60%, and 18.18 — 18.31%. However, recognition of two additional risk factors not captured by his risk analysis, the uncertain status of PSNH dividends and PSNH shareholders riskier position compared to debt holders with regard to regulatory outcomes, result in a recommendation of 19%. Rosenberg also performed a comparable earnings analysis based on data ending in January 1986 in his original testimony but did not update it for consideration at the time of the hearings.

Staff presented the testimony of Dr. Sarah

P. Voll who recommended a range of 11.63% to 13% with a point estimate of 11.94%. She utilized the DCF methodology to analyze a group of 35 electric companies of approximately similar size as PSNH. Her 11.94% result is based on the average of the entire sample using historical growth rates while the upper end of the range (13%) reflects the expectation that investors probably expect future growth rates to be healthier than the growth rates of the immediate past. 6 Tr. 610-611. Voll states that it is inappropriate to recognize for ratemaking purposes the level of return desired by investors in PSNH common stock. She argues that PSNH is viewed as a speculative investment by investors, and that "profits such as are realized or anticipated in ... speculative ventures" offend the judicial standard as enunciated in Bluefield Water Works & Improv. Co. v. West Virginia Pub. Service Commission, 262 U.S. 679, 692, 693, PUR1923D 11, 21, 67 L.Ed. 1176, 43 S.Ct. 675 (1923) [hereinafter cited as Bluefield].

2. Commission Analysis

The three rate of return witnesses have presented the Commission with a wide range of estimates of the allowed cost of equity for PSNH. The estimates are calculated according to two different methodologies, the risk premium (Williamson) and the DCF (Voll) or a combination of both (Rosenberg). In general, this Commission has found the DCF method based on a sample of comparable companies to be the preferred methodology. Risk premiums themselves are subject to considerable variation during different time periods and at different interest rate ranges, with the spreads between equity and debt being particularly uncertain. In the instant case we are particularly troubled by the uncertainty surrounding Williamson's calculation of the risk premium of the preferred, which requires assumptions concerning investor expectations on the resumption of preferred dividends, and on the lack of documentation of the spread between preferred and common, especially in his update. Therefore we will base our findings on the DCF methodology as presented by Voll and Rosenberg, as well as taking note of the Federal Energy Regulatory Commission's (FERC) DCF derived generic rate of return of 11.43% covering the period November 1, 1986 to January 31, 1987 as reported at: FERC Statutes and Regulations, ¶ 14,059.

The DCF methodologies from these three sources are approximately the same and, using Rosenberg's update, are based on data from similar time periods. The difference in the results stems primarily from the differing samples. Voll's 11.94% (historical growth rates) and 13% (forecasted growth rates) are based on a sample of 35 smaller electric utilities, including both companies with and without nuclear involvement. The FERC bases its estimate (11.43% for the six-month time period ending September 30, 1986) on a sample of 100 electric utilities of varying sizes. Rosenberg's sample of 30 companies is essentially the nuclear subset of the FERC sample and produces a basic DCF result of 13.30%.

The fundamental disagreement between the Voll and Rosenberg lies not in their DCF results but in the risk premium to be assigned to PSNH to recognize the riskiness of its nuclear involvement. The existence of that added risk is not a matter of dispute: Voll noted in both prefiled (Exh. 13, p. 116) and oral (6 Tr. 621) testimony that PSNH was riskier than her sample. In fact, she bases her non-recognition of an added risk premium on the argument that PSNH is so

risky that from an investor perspective, its stock is a speculative investment.

Of the available DCF analyses, we find the sample used by Voll of 35 of the smaller electrics to be most appropriate. We will accept the upper end of her range (13%) as an estimate of investor expectations on the performance of an average of the smaller electric utilities in the period during which rates will be in effect. We find that her point estimate of 11.94% is too low. That estimate is based on historical data and includes 18 companies with

Page 256

nuclear involvement for whom investors undoubtedly expect healthier levels of dividend and earnings growth in the future than they have experienced in the past. To compensate for this reasonable expectation, we choose the upper end of Dr. Voll's range of 13% as reasonable.

[5] The final question is what risk premium, if any, should be added to this DCF result to recognize the added risk of PSNH. While we agree with Staff that full recognition of the investor required return may offend the standards enunciated in Bluefield concerning speculative investments, we do not agree that it logically follows that Bluefield prohibits any recognition of added risk. There is unquestionably a level of added investor risk that accompanies an electric utility's involvement in nuclear construction even for companies that are by no means speculative. The dissent fails to recognize this reality. We believe that an estimate of this greater than average risk can be obtained by comparing the FERC DCF analysis based on a sample of diverse companies (11.43%) to Rosenberg's results based on a sample of companies with nuclear involvements (13.30%). This differential of 187 basis point represents a legitimate "greater than average" risk faced by companies with nuclear construction programs that in no way offends the Bluefield strictures against returns on speculative ventures. We will therefore add this risk premium to the DCF result of the 13% return on the sample of diverse smaller electric utilities to obtain a return on equity of 14.87%. For ratemaking purposes, we find 15% to be a reasonable estimate of the return on equity for PSNH.

Based upon the foregoing analysis, the cost of capital is calculated as follows:

Weighted

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

Total Rate Cost

Long Term Debt 155.58% 15.28% 18.49%
Preferred Stock 112.28% 13.28% 11.63%
Common Equity 132.24% 15.00% 14.82%
Total 100.0% 14.94%

V. REVENUE REQUIREMENT

Based on all of the information previously stated in the Report, the revenue deficiency $20,490,866 calculated as follows:

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

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE
COMPUTATION OF REVENUE DEFICIENCY
TEST YEAR ENDED SEPTEMBER 30, 1985

Total N.H.

	Company	Jurisdiction
Rate Base	$619,540,000	$584,155,715
Rate of Return	14.94%	14.94%
Required Net Operating Income	$692,559,276	$587,272,864
Pro Forma Net Operating Income	$678,790,663	$575,992,642*
Required Net Operating Increase	$613,768,613	$511,280,222
Tax Effect (44.95%)	$611,242,491	$589,210,644
Revenue Deficiency	$625,011,104	$520,490,866

---------- *Derived from a percentage of the pro forma net operating allocated to the New Hampshire jurisdiction per exhibit 2. The rate base allocation is derived from the same exhibit.

Page 257

VI. SEABROOK CAPITALIZATION

The Consumer Advocate objects to including in the cost of capital, for ratemaking purposes, the amount and cost rate of any securities which could have provided sources of funds for PSNH's Seabrook construction program. The Consumer Advocate uses the same rationale to support his motion to dismiss PNSH's petition. The Consumer Advocate argues that PSNH's request for a return on rate base is derived from a weighted average of all the Company's capital including capital invested in Seabrook. He concludes that this methodology violates the provisions of RSA 378:30(a). This is the third time that the Consumer Advocate raises this issue. (See Re Public Service Co. of New Hampshire, 65 NH PUC 251, 275, 276 [1980]; Re Public Service Co. of New Hampshire, 69 NH PUC 42, [1984].)

In Re Public Service Co. of New Hampshire, 69 NH PUC 67, 83-86, the Commission addressed the identical issue presented in this proceeding and concluded that RSA 378:30(a) does not address the methodology used to determine an appropriate rate of return and held that RSA 378:30(a) does not act as a barrier to recovery of Seabrook related costs as part of the utility's rate of return. The Commission did not rest its decision on the factual evidence, but rather, on the Commission's interpretation of RSA 378:30(a). Re Public Service Co. of New Hampshire, 69 NH PUC 65, 85-86.

The Consumer Advocate attempts to rely on language used by the Court in Re Public Service Co. of New Hampshire, 125 N.H. 46, 60, PUR4th 16, 480 A.2d 20 (1984) as authority to require a departure from the previous decisions of the Commission. We do not agree with the Consumer Advocate's interpretation of that case.

The analysis that a particular cost rate for a particular security instrument is reasonable is an issue which must be undertaken in the context of a financing proceeding pursuant to RSA 369. Therein the terms and conditions, among other things, are examined as to reasonableness in light of current market conditions. When the Commission developed a concern over the impact on rates, it reserved any prudency determination. 67 NH PUC 956; 68 NH PUC 5; 68 NH PUC 119; 68 NH PUC 416; 68 NH PUC 412; 68 NH PUC 611; 69 NH PUC 275. The Commission is currently examining the entire prudency issue of the Seabrook project and has engaged a consultant to assist it. The results of that proceeding will be applied to all issues of prudency appropriate for ratemaking.

Although the Commission did not rely on the factual evidence in past proceedings and does not do so herein, it should be observed that Dr. Voll's analysis in DR 82-333 was only a first approximation and that many adjustments would have to be made including adjustments for a risk premium and overall cost of money for the Company. Dr Voll's testimony in this proceeding is similar and consistent with her testimony in DR 82-333. Tr. Vol. 6, pp. 495-501. Dr. Nichols, the Consumer Advocate's witness in this proceeding, did not do any independent analysis but noted that his methodology simply extended upon Dr. Voll's testimony. Tr. Vol. 13, p. 70. Nor did he read or analyze the previous decisions of the Commission. Tr. Vol 13, p. 71. He merely relied on what the Consumer Advocate instructed him as to the facts and the law. The record does not reflect any evidence or compelling reason to justify departure from the previous Commission orders or from the long-standing Commission practice.

The Commission has re-examined its prior decisions and the evidence presented in this proceeding and finds there is no compelling reason to change the methodology for calculating rate of return.

Based on the above reasons, the Consumer Advocate's Motion to Dismiss PSNH's Petition is denied.

VII. REQUEST FOR ADDITIONAL STEP INCREASE FOR ATTRITION

PSNH requests that the Commission authorize it to provide for a step increase effective January 1, 1988. No other party has directly addressed this issue. However, CRR

Page 258

and the Consumer Advocate recommend rate reductions as a result of this case. The Commission Staff has recommended one rate increase at the end of this case, the details of which are discussed elsewhere in this Report. The Commission examines this issue in that context.

The Company's proposed tariffs in this case proposes that "the rates of the tariff would be adjusted upwards by a step increase of not more than 35 million as an attrition allowance" to be effective July 1, 1987. (NHPUC No. 30-Electricity, Original Page 13). The proposed tariff provides and the original prefiled testimony stated that the step adjustment was to be based upon revised tariff pages and supporting data to be filed on or before June 1, 1987. According to the prefiled testimony data was to be related to a series of expense and rate base changes for the year ending March 31, 1987. During examination by the bench after Counsel's cross-examination on the prefiled testimony, Company Witness Bayless stated that the Company changed its position on the timing of a step increase and now proposes an increase for January 1, 1988. On redirect examination changes were also suggested regarding the proposed filing date for tariffs and information that any such increase should be based upon. In addition to the attrition reason provided in the tariff, the Company testified that the step increase proposal would also ease administrative burdens for both the Company and the PUC because it would avoid a rate case to address an increase at the time of the step adjustment.

[6] The New Hampshire Supreme Court has defined attrition as an erosion in earning power of a revenue producing investment. New England Teleph. and Teleg. Co. v. New Hampshire, 113 N.H. 92, 97, 98 PUR3d 253, 302 A.2d 814 (1973). The record in this case also generally

supports this definition. Company testimony stated that the step increase was a more accurate method of dealing with attrition than a traditional attrition adjustment. Whether or not this method is more accurate the record indicates that the Company has not experienced attrition. Instead, the Company has generally exceeded its authorized rate of return since its last rate case. The Commission is unable to find that PSNH will experience attrition between setting of rates in this docket and January 1, 1988.

The tax issue in this proceeding may be an additional factor in reducing the Company's future revenue requirement. The Commission is utilizing a blended federal tax rate of 40% to set rates in this docket and after January 1, 1988, the appropriate rate will be 34%. The large effect of these federal taxes may indicate that the most appropriate action at that time is a reduction. The Commission is monitoring the effects of the federal tax rate changes on all the companies it regulates and will continue to monitor that for PSNH. However, with regard to this rate case, the Commission finds that the record simply does not support the need for a step increase. Thus, PSNH's request for authorization of a step increase is denied.

VIII. TERMINATION BY CONCORD ELECTRIC COMPANY AND EXETER & HAMPTON ELECTRIC COMPANY

Up until November 1, 1986, Concord Electric Company (Concord) and Exeter & Hampton Electric Company (Exeter) were full requirements customers of PSNH. In this docket the Commission Staff began looking into PSNH actions as they relate to the loss of these customers. Rather than considering those actions in this docket the parties agreed that the issue should be "deferred in a subsequent case", subject to the following three qualifications:

1. PSNH will quantify the impact of the terminations with respect to its revenue requirement in this case, as previously agreed with Staff;

2. Such portion of any allowed revenue increase attributed to the impact of the terminations shall be allowed subject to refund, pending further investigation by the Commission; and

Page 259

3. Quantification provided by PSNH is subject to further discussion among the parties, and, if necessary, hearing and decision by the Commission.

The Commission finds this resolution reasonable as is further developed below.

Some of the basic facts of this situation are developed in the orders from the Federal Energy Regulatory Commission (FERC) Docket No. EL85-15-000, Re Public Service Co. of New Hampshire, 31 FERC 61,267 (June 4, 1985), and 32 FERC 61,251 (August 20, 1985), (Order denying rehearing). According to those orders, Concord and Exeter have, since 1964, received full requirements wholesale electric service from PSNH under contracts which provide for termination of service as follows:

Section I - Term

Unless ordered by any regulatory body having jurisdiction, the term of this agreement shall commence at the time of its acceptance for filing by the Federal Power Commission and shall continue thereafter until terminated by either party giving to the other not less than two (2) years

written notice specifying a date for termination.

31 FERC ¶ 61,267 at 61,545, 61,546. By letters dated September 7, 1984, Exeter and Concord notified PSNH that they would terminate service on September 30, 1986. On December 7, 1984 PSNH petitioned to the FERC for declaratory order which requested that the Commission declare the termination of service by Exeter and Concord as improper under the terms of their contracts, and unjust and unreasonable under the Federal Power Act. PSNH also requested that the FERC require Exeter and Concord to continue service with PSNH until November 1, 1993 or until PSNH can make sales of the capacity "dedicated to Exeter and Concord." In its filings before the FERC, PSNH indicated that the loss of Concord and Exeter would transfer to the Company and its remaining customers increased revenue requirements of $212,000,000 through 1992. 31 FERC ¶ 61,267 at 61,546.

FERC denied PSNH's requests. In making their decision, FERC found that the above quoted Section 1 of Exeter and Concord's contracts with PSNH provides "a specific unequivocable provision that the contracts can be terminated upon a written, two year notice." 31 FERC ¶ 61,267 at 61,547. FERC, in its order on rehearing, noted that to allow challenges to terminations of service once the notice to terminate is properly given would, among other things, "render the `term' provision of a contract meaningless". 32 FERC ¶ 61,251, at 61,548. FERC further stated the following:

PSNH notes that section VI of the contracts provides that either party may request the other party for an adjustment of any of the terms and conditions, if conditions have changed materially since the contract was executed and are working a substantial inequity on the party filing the request. PSNH admits that it did not invoke this provision at any time during the 20 years that the contracts have been in effect. Thus, PSNH bypassed a contractual mechanism whereby it could have negotiated a longer termination notice, in light of its Seabrook investment to ensure that E&C continued to purchase from PSNH.

31 FERC ¶ 61,267 at 61,548 n. 9. In the order on rehearing the FERC stated that "PSNH could have protected itself by making a timely filing to prospectively amend the contract terms before it made substantial investments on behalf of [Exeter and Concord]." (Emphasis in original) 32 FERC ¶ 61,251, at 61,548. FERC further noted that utilities must build capacity for firm service and are entitled to just and reasonable terms for providing such service, including adequate notice of termination provisions. Id.

The Commission acknowledges that the

issues raised by these circumstances are complex. In addition, the quantification of the loss of Concord and Exeter that is before the Commission in this docket indicates that at this time depending on various decisions of the Commission in this case, the impact of the loss may be positive or negative and, in light of other issues in this case, is relatively small. Based on the record in this case and the Commission's special expertise in this area, the Commission anticipates that the quantification of the loss of these customers would be significantly larger if a substantial portion of the PSNH investment in the Seabrook nuclear plant were included in the Company's rate base. Thus, for all these reasons, the Commission deems deferring consideration

of the reasonableness of PSNH's actions with regard to the loss of these customers to a subsequent case to be reasonable. In addition, the Commission finds the parties agreement that any portion of a revenue increase attributed to the impact of a termination shall be subject to refund is also reasonable, for under this resolution the matter can be decided in the future and deal with any rate impact resulting from the current case.

With regard to quantification of any matters subject to refund, PSNH shall file a quantification of the impact of the loss of these customers using the methodology utilized in Exhibit 22 but modified to be consistent with decisions in this Order. That quantification shall be filed in a new docket assigned by the Commission's Secretary for consideration of the loss of Concord and Exeter. After receipt of the PSNH quantification, the Staff shall contact parties to this docket and attempt to schedule an informal meeting of all parties desiring to participate in the new docket for the purposes of developing a settlement on quantification for DR 86-122 rates or providing a hearing schedule for the final quantification of the impact of the loss of these customers in the rates resulting from this docket.

IX. RATE DESIGN

1. Position of the Parties.

The Company's position on rate design in this proceeding is to allocate the proposed increase to total revenues in a manner which increases each class's actual test year level of revenue (including ECRM at the test year level of 3.227 /kwh) by a uniform percentage. The Company's proposal for a uniform percentage increase maintains the same relative class revenue responsibilities approved by the Commission in the previous rate case proceeding (except for the effect of ECRM changes). The Company indicates that a re-investigation of the allocation of revenue responsibility based on marginal cost and the appropriate reconciliation methodology to be used should be addressed in the context of the Company's Seabrook rate case or a special proceeding on those issues.

During the course of this proceeding, the Company also presented evidence regarding an alternative to the uniform percentage increase method. This allocation was the National Economic Research Association (NERA) inverse elasticity methodology set forth by the Company to inform the Commission and parties of PSNH's current thinking on revenue reconciliation. The Company does not ask the Commission to make findings in this area on the appropriateness of the NERA reconciliation methodology.

The Company submitted as part of its prefiled testimony an embedded cost of service study which forms the basis of the overall revenue requirement requested in this case. In response to data requests, the Company has also submitted two marginal cost of service studies, one based on the 1984 methodology and one based on a revised 1987 methodology. The Company's position in this case regarding rate design and customer class responsibilities does not rely on any of these three studies.

The Business and Industry Association (BIA) position in this case is that the Commission should continue to utilize the marginal cost study and reconciliation

methodology that it approved in DR 82-333. The BIA proposes an allocation of the revenues which maintains the status quo in terms of the relationship of class cost of service to class revenue responsibility. BIA bases its rate design proposal on the results of the Company's updated 1984 Marginal Cost of Service Study. The BIA proposal would result in less than average increases for the TR, GV and G classes. According to the BIA, this would serve to correct the current situation which BIA views as a subsidy of the D and ML classes at the expense of the TR, GV and G classes.

The Consumer Advocate supports the Company proposal for a uniform percentage allocation for each class of any revenue increase allowed in this proceeding. In addition, the Consumer Advocate proposes in future rate cases that the Commission use an adequate embedded cost study instead of using marginal costs as a major tool in designing retail rates. The Consumer Advocate argues that the correct allocation of Seabrook capital costs can only be accomplished directly through an embedded study. The Consumer Advocate further argues that marginal cost studies can be used for developing time of use and other rate designs.

The Federal Executive Agencies (FEA) position is that commercial and industrial customers are discriminated against under current rates and that an across-the-board increase will continue and perhaps worsen that situation. The FEA proposes the use of both embedded costs and marginal costs as the basis for class revenue levels. The FEA presents its own cost of service study which is a blend of marginal and embedded costs derived from the Company's embedded study and other cost data. The FEA proposal for class revenue levels based on its marginal cost study allocates less than average increases to the TR, G and GV classes and higher than average increases to the D and ML classes. FEA also proposes that time-of-day rates be established for the TR class.

Staff's conclusions in this case are that the two marginal cost studies and the embedded cost study submitted by the Company are inadequate and therefore should not be used as the basis for customer class revenue allocations in this rate case. The scope of these inadequacies include:

(1) The underlying assumptions used for marginal costs are inconsistent with those used for avoided costs.

(2) The Company has not provided adequate documentation or detailed support for the various marginal cost calculations or embedded cost allocations.

(3) The Company's updates and improvements in the embedded study and the marginal cost study have been insufficient since the last rate case.

(4) The four changes in the marginal cost study proposed by NERA are controversial and have not been sufficiently justified by the Company.

(5) The Company does not support the use of its own marginal or embedded cost studies for purposes of rate design in this case.

Staff also believes that the Company's stated goal to send correct price signals and the past Commission efforts to institute PURPA ratemaking standards would lean in favor of using marginal cost studies rather than embedded studies for rate design. Staff also concludes that because ECRM is a flat kilowatt hour rate, it biases the inter-class revenue allocations and does not correctly reflect marginal energy costs. Staff recommends that a separate docket should be

opened to consider these issues on cost of service and rate design.

2. Commission Analysis

The Commission finds that significant inadequacies in the Company's current cost of service studies in this case render any conclusions based upon these studies unreliable. Consequently, a redesign of existing

class responsibilities which is based upon the current cost of service studies can not be sufficiently justified. Therefore, the Commission accepts the Company's proposal for a uniform percentage increase applied to each customer class reflecting the revenue increase allowed in this proceeding.

The Commission intends to re-examine rate design in a future docket which will address these various inadequacies of the marginal and embedded cost of service studies. The Commission will consider both marginal and embedded studies as useful in developing a rate design for the Company. The Commission will also consider various revenue reconciliation methodologies including the inverse elasticity method.

The Commission acknowledges that the implementation of time-of-use (TOU) rates was scheduled to occur as a result of the last rate case (DR 82-333, Part B). The Company has submitted additional materials on time differentiated marginal costs in the course of this proceeding. The Commission continues to encourage the Company to move forward in accomplishing the implementation of TOU rates.

X. REFUND OF OVERCOLLECTION UNDER RATES IMPLEMENTED UNDER BOND

On January 1, 1987, PSNH implemented its proposed rates in this case under bond subject to refund as it is authorized to do under RSA 378:6 III. See: Report and Order No. 18,523 (71 NH PUC 829) Regarding Rates Subject to Refund and Procedural Matters (December 23, 1986). Under that statute, the difference between the amount placed into effect under bond and the rates determined to be just and reasonable shall be refunded to the customers of the public utility. This section addresses the mechanism by which PSNH shall refund this difference.

The Commission has received from the parties an Agreement Regarding the Refund Issue filed June 22, 1987. By that agreement, CRR, the Consumer Advocate, PSNH and the BIA recommend that the Commission defer decision on this matter beyond June 30, 1987 to allow the parties to consider a proper refund plan. The agreement further recommends that if no agreement is reached among the parties by July 13, 1987, the Commission should re- solve the remaining issues on an expedited basis. The Commission Staff participated in the negotiations leading to the agreement but did not enter into the agreement. The Federal Executive Agencies and the Department of Defense did not participate in the negotiations or the agreement.

The Commission will give the parties an opportunity to reach a mutually acceptable refund plan and submit it to the Commission for approval. If such a plan is not approved by July 13, 1987 the Commission shall issue a supplemental order directing the manner that refunds shall be implemented.

The Commission finds that the circumstances of this refund requires that an acceptable refund plan should be customer, specific with interest calculated at 10%.

Our Order will issue accordingly.

Opinion of Commissioner Aeschliman Dissenting in Part

At the conclusion of this proceeding Public Service Company of New Hampshire (PSNH) was supporting a revenue deficiency of $38,682,000. (PSNH Brief, Appendix A) The majority opinion provides for a rate increase of $20,490,866. I would grant a rate increase of $13,699,592. The difference of $6,791,274 is based upon different findings relative to the appropriate rate of return on equity to allow for ratemaking purposes in this case. The majority has allowed 15%; I would allow 13%. There are also procedural differences in the manner in which we would treat revenues related to the debt cost component of the rate of return.

Page 263

PSNH's high debt cost rates and the speculative nature of the PSNH stock are the direct result of the Company's Seabrook participation and the Company's management and financing of that construction program. In determining an appropriate rate of return for ratemaking purposes the Commission is required to consider more than the Company's actual cost rates for debt and equity; the determination of an appropriate rate of return for ratemaking purposes is more than an arithmetic exercise.

The rate of return allowed should comply with the judicial standard of a fair rate of return which requires that

The return should be reasonably sufficient to assure confidence in the financial soundness of the utility and should be adequate, under efficient and economical management, to maintain and support its credit and enable it to raise the money necessary for the proper discharge of its public duties. Bluefield Water Works & Improv. Co. v. West Virginia Pub. Service Commission, 262 U.S. 679, 692, 693, PUR1923D 11, 21, 67 L.Ed. 1176, 43 S.Ct. 675 (1923).

Under this standard efficient and economical management is clearly expected.[2(74)] The problem in this case is that the Commission has not examined nor has it received evidence from the Company relative to the prudence of the Company's management decisions involving the construction management and financing of Seabrook.

From the time of the Supreme Court's suspension of Commission Order No. 15,760 (July 16, 1982) (67 NH PUC 490, 47 PUR4th 167) in August 1982 and subsequent reversal of that Order (December 27, 1982) until the decision of the Court in Re Easton, 125 N.H. 205, 480 A.2d 88 (1984), the Commission specifically deferred any judgment relative to the prudence of the level of the Company's construction program and the prudency of the financings.

The PSNH liquidity crisis that occurred in the spring of 1984 and the suspension of dividend payments at that time created severe difficulties in the marketing of PSNH securities. The cost of senior capital issued after that time as well as the types of security offerings the Company could pursue have been severely impacted. In financing cases following the liquidity crisis of 1984 the Commission has indicated in its decisions that approval of the financing did not carry with it

approval of the cost rates for ratemaking purposes. 69 NH PUC 275 (1984); 69 NH PUC 415, 419, 420 (1984); 69 NH PUC 469, 479 (1984); 69 NH PUC 522, 539 (1984).

Because of this situation the Commission Staff in the testimony of Dr. Voll recommends that the actual debt cost rates be utilized in the calculation of the rate of return subject to the refund pending the outcome of the Commission's prudency deliberations in the Seabrook rate case. In the case of equity Dr. Voll recommends an equity return appropriate to companies of PSNH's relative size recognizing the risks of nuclear involvement. She does not recommend the addition of extraordinary risk premiums due to the speculative nature of PSNH's stock. I believe Dr. Voll's analysis is appropriate and should be utilized for setting rates in this proceeding.

Cost Rate for Long Term Debt

While I am willing to accept Dr. Voll's recommendation for ratemaking purposes in this docket, I recognize, as does the majority, that there are legal concerns with this approach. It is not clear what regulatory approach best ensures the Commission's ability to provide future refunds of rates collected pursuant to the Order in this case. However, I would have taken an additional step to preserve the Commission's ability to make a retroactive rate reduction.

I would have set the portion of the rates resulting from the cost rates of the debt issued subsequent to the liquidity crisis of 1984 as temporary rates pending the completion of the Seabrook prudency review and opened a docket for that review. The

Commission has explicit authority to set temporary rates pursuant to RSA 378:27. That statute provides that in any proceeding involving the rates of a public utility brought under either the motion of the Commission or upon complaint, the Commission may prescribe reasonable temporary rates.

The New Hampshire Supreme Court has held that this temporary rate statute was originally enacted to deal with potential reduction. Public Service Co. of New Hampshire v. New Hampshire, 102 N.H. 66, 69, 28 PUR3d 404, 150 A.2d 810 (1959). The Court has found that "the real issue [in the setting of temporary rates] is what the public interest requires". The public interest clearly requires that ratepayers be afforded the opportunity to recoup any rates based upon costs which may be found to be imprudent in the future.

Rate of Return on Equity

[ii] The majority has calculated rates based upon a 15% return on equity. This is a very high return given prevailing market rates. For comparison, the rate of return on equity granted to PSNH in January 1984 was 16.1%. Since that time interest rates have fallen some 400 basis points, and a comparable rate of return today would be closer to 12%. I would allow a 13% return which Dr. Voll's testimony indicates is the "plausible upper limit for a reasonable return on equity for ratemaking." (Exh. 14, p. 9). A return at this level gives appropriate recognition to the risk of nuclear construction. The majority in adding an additional premium double counts this risk.

The rate of return on equity is derived from an analysis of market data rather than from Company specific cost rates which are used in the calculation of debt costs. The primary

methodology used in this jurisdiction is the discounted cash flow (DCF) analysis. This analysis involves the selection of a sample of utility companies of similar size and business risk from which the data is obtained to perform a DCF analysis.

Dr. Voll's testimony indicates that an appropriate sample is one that includes relatively small electric utilities, particularly those that are involved in the construction of nuclear power plants but have not experienced the type of liquidity crisis that would lead to a suspension of dividends and would place them in the category of speculative investments. (Exh. 13, p. 17). Her DCF analysis for utilities with construction programs resulted in a total expected return of 11..63% (Exh. 14, p. 18). This return was actually lower than the return for non-nuclear utilities because the historical dividend growth rates for the nuclear utilities was very low resulting in a slightly lower total return even though the required yield was higher. If forecasted dividend growth was used rather than the historical growth rate, the expected return for utilities with construction programs was calculated to be 12.94%. It is important to note that the 12.94% applies only to nuclear constructing utilities and not to Dr. Voll's sample of 35 utilities as a whole. The 12.94% provides the basis for Dr. Voll's conclusion that 13% is the upper limit that can be justified by the DCF analysis. (Exh. 14, p. 19 Rev.).

The majority has taken Dr. Rosenberg's DCF sample which comprises large nuclear constructing utilities and has derived from his analysis a risk premium for this group of nuclear, constructing utilities compared with a Federal Energy Regulatory Commission (FERC) sample of diverse utilities. Their analysis then adds Dr. Rosenberg's risk premium to Dr. Voll's upper limit of 13% to obtain a 14.87% rate of return which is then apparently rounded up to 15%.

There are two basic flaws to this approach. First, Dr. Rosenberg's sample of large nuclear constructing utilities is not an appropriate comparison group because their size is not comparable to PSNH. It should also be noted that Dr. Rosenberg's analysis for nuclear constructing companies yields a result of 13.3% which includes the premium for risk of nuclear construction. Second, Dr. Voll's upper limit of 13% already includes an adder for nuclear constructing

utilities above the 11.94% calculated return for her diverse sample of small utilities. Thus, the difference between 11.94% and 13% is a risk premium for small nuclear constructing utilities. To add a further premium double counts the risk. Consequently, the majority has reached a result which is not supported by the testimony of any expert witness and which cannot withstand critical analysis. Since Dr. Rosenberg's analysis and Dr. Voll's analysis incorporate nuclear risk in reaching their 13.3% and 13% DCF results, a 15% level can only be reached by adding additional risk premiums due to PSNH's speculative situation.

My analysis would result in an overall rate of return of 14.30%, which is a high return by present market standards. It is the most I believe should be allowed in this case absent a prudency review.

SUPPLEMENTAL ORDER

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

ORDERED, that Public Service Company of New Hampshire's Tariff No. 30 - Electricity be,

and hereby is, rejected; and it is

FURTHER ORDERED, that Public Service Company of New Hampshire file revised tariff sheets to collect additional revenues of $20,490,866 in accordance with the rate design approved in the foregoing Report; and it is

FURTHER ORDERED, that the increase shall be applied on a uniform percentage basis to the base rates of each customer class; and it is

FURTHER ORDERED, that the effect of this revenue change is to be applied to all bills rendered on or after July 1, 1987; and it is

FURTHER ORDERED, that the Company shall refund the difference between the bonded and the permanent rates on a customer specific basis with interest calculated at 10% in accordance with a refund plan filed by the parties and approved by the Commission or further order of the Commission.

By order of the Public Utilities Commission of New Hampshire this twenty-ninth day of June, 1987.

FOOTNOTES

[1]The New Hampshire Electric Cooperative cases cited in brief by the Company do not apply. The 70:30 proforma capital structure was proposed by the NHEC witness but not adopted by the Commission. The Commission's findings were based on TIER coverage rather than hypothetical capital structure.

[2]Priest, Principles of Public Utility Regulation at 206.

==========

NH.PUC*06/30/87*[60268]*72 NH PUC 266*Public Service Company of New Hampshire

[Go to End of 60268]

72 NH PUC 266

Re Public Service Company of New Hampshire

DR 87-32
Supplemental Order No. 18,727

New Hampshire Public Utilities Commission

June 30, 1987

ORDER approving a special private contract rate for electric utility service.

---

1. RATES, § 321 — Electric — Special contract rates — Industrial customers.

[N.H.] An electric utility was authorized to provide service to an industrial customer under a

special (lower) contract rate where the contract was consistent with the commission's special industrial contract policy, which requires that (1) the contract shall be for new load of greater than 300 kilowatts, (2) the term of the contract shall not exceed 10 years, (3) the special contract rate shall exceed marginal cost but not exceed standard rates on a present value basis, (4) potential competitors of the customer receiving the special rate shall have notice and opportunity to be heard, (5) the contract shall be directed at mitigating the rate effects of the Seabrook nuclear facility, and (6) the contract shall not have

Page 266

---

the effect of raising pre-Seabrook costs to other customers. p. 269.

2. RATES, § 321 — Electric — Rate design — Special contract rates — Effect of changing cost of service assumptions.

[N.H.] Where changes in the calculation of an electric company's marginal costs of service may be subject to modification due to changing assumptions, such as the Seabrook on-line date and other supply contingencies, all such changes would be required to be reflected in the calculation of special contract rates and said contract rates would be adjusted accordingly. p. 270.

By the COMMISSION:

REPORT

On February 27, 1987, Public Service Company of New Hampshire filed with this Commission a Special Contract No. NHPUC-51 with JARL Extrusions, Inc. for the purpose of providing a special lower electric rate for an extrusion facility to be located in Franklin, New Hampshire.

On March 11, 1987, letters of support for the contract were received from Chester A. Wickens, Jr., Mayor of the City of Franklin and Frank P. Edmunds, City Manager, City of Franklin.

On March 12, 1987 the Commission issued an Order of Notice setting a hearing at the Commission's Concord offices on May 7, 1987. On March 25, 1987 a Re- vised Order of Notice set a revised date of April 21, 1987. On March 27, 1987 the Commission, by Order No. 18,687 ordering that a request by PSNH for a protective order regarding Wyatt Brown's Technical Statement, Attachments 1, 2, 4, 5, and 6 and the rates included in Appendix A to the contract be placed under protective order.

On March 30, 1987 the Consumer Advocate, Michael W. Holmes, Esquire moved for a prehearing conference. PSNH objected to the motion by letter of April 7, 1987. The Commission granted the motion for prehearing conference by its Order No. 18,644 on April 17, 1987 and said that the hearing scheduled for April 21, 1987 would not be on the merits of the petition but would instead be a prehearing conference.

The Commission was notified on April 14, 1987 that a legal notice relative to the hearing

appeared in the Union Leader on March 28, 1987.

The hearing opened as scheduled. Martin L. Gross, Esquire represented Public Service Company of New Hampshire. Michael Holmes, Esquire, Consumer Advocate, appeared on behalf of residential ratepayers. Martin C. Rothfelder, Esquire represented the Commission and the Commission Staff. Based on the recommendations of two of the parties the Commission agreed to allow the hearing to go forward on the merits of the case, reserving the rights of Staff to have further cross-examination at a later date.

PSNH contends that the proposed contract is supported by the set of special circumstances that the Commission specifically recognized in DR 82-333 in Order No. 16,885 (69 NH PUC 67, 57 PUR4th 563). When the Commission adopted a new policy allowing PSNH to pursue the "Special Industrial Contract Policy" (SICP) the required circumstances in that Order are (1) that the contract is for new load which would not exist without the special contract rate, and the new load is greater than 300 KW, (2) the term of the agreement does not exceed 10 years, (3) that the special contract rates are higher than PSNH's marginal costs but no higher than standard rates on a present value basis, (4) that any potential competitor of the customer has been given notice and opportunity to be heard on the subject, and (5) that although the contract is directed at mitigating post Seabrook rate effects, it will not have the effect of raising pre-Seabrook costs to other customers since the contracted rate will fall between PSNH's marginal cost at the low end and average total cost at the high end.

PSNH offered testimony that JARL fits squarely within the policy perimeters

outlined by the clauses for special industrial contracts. First, this contract is for 800 kilowatts of new load for a new industry to be located in Franklin, New Hampshire. Special contract rates are necessary to make New Hampshire the least cost choice for JARL, fulfilling the first of the Commission's criteria for qualification for the special rate (Lawrence, Massachusetts is a potential alternative location for JARL). Second, the contract has a five year term which is within the maximum ten year term allowed under the policy. Third, the contract provides for discounts from GV rate over the term of the contract which will vary with the formula assuring that contract rates will never be lower than 103% of PSNH's marginal costs or stipulated benchmark rate or the estimated electric rates at Lawrence, Massachusetts during the life of the contract, whichever is highest. Fourth, there are no competing aluminum extrusion plants in New Hampshire. Fifth, because the contract rate will never fall below 103% of marginal costs, the contract will not shift pre-Seabrook costs onto other ratepayers.

PSNH Witness James T. Rodier testified that the proposed contract falls within the scope of the Commission's special industrial contract policy which was part of the settlement agreement on rate design in docket DR 82-333. Article 7 of that agreement states that SICP is intended to establish a Commission policy for favoring and allowing special contracts between PSNH and certain customers which will provide for electric rates below otherwise applicable tariff rates. The two stated objectives of SICP are to minimize the impact of major increases in electric rates on New Hampshire's growth, and to encourage new electric loads as a means of reducing the fixed cost burdens on all ratepayers.

Mr. Rodier testified that JARL Extrusions has represented to PSNH that the special lower electrical rate is necessary in order for JARL to locate an aluminum extrusion facility in Franklin, New Hampshire rather than in Lawrence, Massachusetts or any other State or another region. The City of Lawrence has significance in this proceeding because (1) it is the home of JARL's largest competitor, (2) it is an actual candidate location for JARL's facility, and (3) JARL's general manager operated an aluminum extrusion in Lawrence for seventeen years and is familiar with the climate and cost of doing business in Lawrence. The City of Lawrence was therefore used as a proxy in establishing the benchmark price in this proceeding.

Mr. Rodier testified that JARL retained 10an independent third party reviewer, XENERGY, to evaluate whether it was necessary to grant a special rate in order to convince them to locate in Franklin. XENERGY's Mr. Norwood provided an analysis showing that an aluminum extruders four broad categories of costs of doing business are labor, taxes, transportation and electric rates. Mr. Norwood's evaluation showed that labor, taxes and transportation are actually expected to be higher in Franklin than in Lawrence but that the overall business climate in New Hampshire was such as to drive JARL to Franklin if the fourth category — electric rates — were available at the level offered in this proceeding.

Mr. Norman A. Cullerot, Manager of Industrial Development, PSNH, testified that their first understanding that JARL was interested in moving to New Hampshire came through a contact with Mr. Guilderson of the Office of Industrial Development, New Hampshire Department of Resources and Economic Development. Mr. Guilderson had made JARL aware that PSNH offered an industrial incentive rate and that information prompted JARL's Mr. Specker to contact PSNH in August, 1986. PSNH was advised that JARL was considering other locations in Massachusetts, Connecticut, Tennessee and Florida, as well as New Hampshire.

Under cross-examination Mr. Rodier testified that, except for the rates specified in the contract, all other costs associated with providing service to JARL would be under normal tariffed rate provisions. JARL will be treated in the same manner as would any other customer in so far as the effects

Page 268

of when and how rate increases will be put into effect except that the contract will determine how the discount from those rates is calculated. The effect of the Energy Cost Recovery Mechanism (ECRM) and transformer rentals will affect JARL in the same manner as it would affect any tariffed customer.

Mr. Cullerot testified that JARL will be considered a large customer compared to PSNH's customer universe. Of the approximately 300,000 retail customers only about 150 have a load equal to or greater than that proposed for JARL. No distribution system changes will have to be made to accommodate the new facility.

Mr. Wyatt Brown, PSNH's Manager of System Planning, Energy Management Department, testified that the proposed rate is above the Company's marginal cost, whether the marginal capacity cost is calculated on either a long term or short term basis. In response to Staff data requests updated marginal cost information was provided which had minor effects on the PSNH's calculations but the Company contends that the proposed JARL rates are high enough to

continue to show a benefit to the system and its customers despite the fact that those revised marginal costs are higher than originally calculated. PSNH has calculated a number of scenarios which take into consideration the possibility of various Seabrook on-line dates and, accordingly, various time periods in which PSNH will be in a capacity deficient position. All scenarios incorporate a phase-in of Seabrook costs. In all cases the scenarios satisfy the condition that JARL's rates will remain above marginal costs.

Mr. Richard L. Speck, Vice President and General Manager of JARL's proposed extrusion plant testified that it was JARL's planning strategy to locate a regional aluminum extrusion plant in the northeast. Having formally operated a plant in Rochester, New York it is their intention to move it to a strategic location to service that market. In early 1986 JARL approached the State of New Hampshire's Economic Development Authority who provided recommendations of proposed sites and advised them of the available incentive contract. Having decided to settle in New Hampshire, based on the assurance of the special electric rate, JARL plans to build a new extrusion plant which will be one of the most advanced mills in the United States. JARL's original concept was that they would locate in New Hampshire if they got this rate.

COMMISSION ANALYSIS

Under the statutes, any reduced contract rate must be just, reasonable and in the public interest. RSA 378:10, 378:11, 378:18. The Commission developed the SICP policy in a PSNH general rate case to provide guidance on how and when it would consider rates that are lower than regular tariff rates. Re Public Service Co. of New Hampshire, Docket DR 82-333, Order No. 16,885 69 NH PUC 67, 91, 92, 57 PUR4th 563 (1984). Application of that policy in this specific case will meet the above discussed statutory criteria as anticipated in docket DR 82-333, Order 16,885, supra. As is detailed below, the Commission further finds that, based on the testimony and exhibits in this docket, the proposed contracts meets the criteria that was specifically addressed in the Commission's Order on SICP policy and is therefore just, reasonable and in the public interest.

[1] First, the contract meets the criterion requiring that the new load is greater than 300 kilowatts. The petition provides that the anticipated load will be approximately 800 kilowatts. The criterion provides that the new load would not exist without the special contract rate. The Commission is satisfied that based on the testimony of the Company's Vice President, Mr. Specker, and upon his letter of clarification to all parties dated April 28, 1987, that JARL would not have made the commitment to locate to Franklin, New Hampshire if an agreement had not been reached with Public Service for the special industrial contract rate.[1](75)

Second, the term of the contract must

Page 269

not exceed 10 years. The Commission acknowledges that the agreement provides for a period which will not exceed five years.

Third, the special contract rates must be higher than Public Service Company's marginal cost but no higher than standard rates on a present value basis. The Commission is satisfied that the marginal costs as currently calculated by PSNH are less than the rates provided in the contract.

The contract provides for discounts for GV rates over the term of the contract which will vary with a formula assuring that contract rates will never be lower than 103% of PSNH's marginal costs. Additionally, the level of rates may also depend upon a stipulated benchmark rate determined by the estimated electric rates in Lawrence, Massachusetts during the life of the contract. The rates ultimately paid by JARL will be the highest of these three potential alternative calculations.

[2] We note that the calculation of PSNH's marginal costs for purposes of the contract rate may be subject to change due to other NHPUC dockets involving the correct calculation of marginal and/or avoided costs for PSNH. The calculation of PSNH's marginal costs may also be subject to change due to changing assumptions such as the Seabrook on-line date and other supply contingencies, i.e., Hydro Quebec II and Pilgrim. The Commission is satisfied that all such changes in the calculation of marginal costs will be required to be reflected in the calculation of the contract rate and that the contract rate will be adjusted accordingly.

Fifth, all potential competitors of the customers must be given notice and opportunity to be heard on the subject. The Commission is satisfied that reasonable attempts were made to identify any potential customers and, none having been found, that adequate notice was made to allow any identified potential customers to notify the Commission of its intent to be heard. No such notifications were received.

Sixth, the contract must be directed to mitigate post-Seabrook rate effects in that they will not have the effect of raising preSeabrook costs to other customers and will not be rendered unnecessary by rates reasonably to be expected under a phase-in of Seabrook costs. The Commission is satisfied that the Company has taken all reasonable steps to assure, through an analysis of various pre-and post-Seabrook analyses, that such affects will not exist.

Accordingly, the Commission approves Special Contract No. NHPUC-51 between JARL Extrusions, Inc. and Public Service Company of New Hampshire.

Our Order will issue accordingly.

SUPPLEMENTAL ORDER

Based upon the foregoing Report which is made a part hereof; it is hereby

ORDERED, that Special Contract No. NHPUC-51 between JARL Extrusions, Inc. and Public Service Company of New Hampshire be, and hereby is, approved.

By order of the Public Utilities Commission of New Hampshire this thirtieth day of June, 1987. Opinion of Commissioner Aeschliman Dissenting in Part

I disagree with the decision of the majority to the extent that the contract provides for discounted rates prior to the operation of Seabrook. I believe the contract could have been approved subject to the condition that the contract rate would become effective at the time of Seabrook operation if that occurs within the five year period.

The Special Industrial Contract Policy (SICP) was approved by the Commission to minimize the impact of Seabrook related costs on the New Hampshire economy and to encourage load growth which would help to moderate future rate increases to all ratepayers. Under these circumstances all PSNH customers were expected to benefit.

The difficulty with the contract as presented is that it provides no safeguards in the event Seabrook is not licensed. If a license is refused, the JARL contract could

Page 270

result in a revenue loss to the Company which would have to be borne by other customers. It is a long standing regulatory principle that discounted or discriminatory rates can only be justified when a benefit to existing customers is demonstrated.[1](76)

Implementing the JARL contract preSeabrook exposes the non-participating customers to unwarranted risk. If Seabrook is denied an operating license then new capacity would have to be purchased to meet short-term demands and longer term capacity additions would need to be implemented. Both would increase long-run marginal capacity cost and short-run marginal energy cost. Consequently, there is a very real possibility that PSNH's actual long-run marginal cost will exceed by a substantial margin the forecasted marginal cost underlying the proposed contract. Under these circumstances rates of existing customers would be increased by the addition of this new load.

One contract viewed in isolation may have minimal effect on other ratepayers. However, when viewed in the knowledge that this contract is likely to be the first of many such contracts the risks of higher rates to other existing customers becomes substantial. I have particular difficulty in understanding why it is necessary to take this risk when the object is to deal with Seabrook rate impacts. It has not been demonstrated that there is any reason to mitigate rates prior to Seabrook operation and SICP contracts could be negotiated with this provision.

FOOTNOTES

Report

[1]The Commission notes that the DIRC policy specified in the settlement agreement in DR 82-333 provided that the policy applies if, among other things:

the contract customer demonstrates and the Company agrees that the kilowatt-hours of energy and kilowatts of demand to which contract rates will apply will serve new or expanded New Hampshire loads which would otherwise not exist without special contract rates.

Our order in DR 82-333 approving this policy may not have been as explicit. That Order talks only of new or existing loads without addressing the requirement of showing that the load would not exist without the rate. Thus, for this case, we approve the contract based upon the showing that JARL is a new load attracted by the potential contract. In future cases, the Commission shall expect stronger evidence showing that the load would not exist without Commission approval of the contract rate.

Dissenting Opinion

[1]Bonbright, Principles of Public Utility Rates, p. 383, 384. Public Service Company expert witnesses also have agreed with this principle. DR 86-122, 14 Tr. 85.

==========

NH.PUC*06/30/87*[60269]*72 NH PUC 271*Concord Electric Company

[Go to End of 60269]

72 NH PUC 271

Re Concord Electric Company

DR 87-30
Order No. 18,728
New Hampshire Public Utilities Commission
June 30, 1987

ORDER accepting tariff revisions decreasing electric rates to reflect the reduction in the federal corporate income tax rate.

RATES, § 147 — Factors affecting reasonableness — Cost of service — Federal income tax reduction — Electric utility.

[N.H.] The rates of an electric utility were decreased to reflect the reduction in the federal corporate income tax rate; the rates were subject to adjustment should additional effects of tax reform be determined.

By the COMMISSION:

ORDER

WHEREAS, on February 25, 1987 Concord Electric Company filed its Revised Tariff Pages NHPUC 10 - Electric as follows:

Page 271

CONCORD ELECTRIC COMPANY

First Rev. Page 21

Superseding Original Page 21 First Rev. Page 22

Superseding Original Page 22 First Rev. Page 25

Superseding Original Page 25 First Rev. Page 27

Superseding Original Page 27 First Rev. Page 28

Superseding Original Page 28 First Rev. Page 32

Superseding Original Page 32 First Rev. Page 35

Superseding Original Page 35 First Rev. Page 38

Superseding Original Page 38;

and

WHEREAS, the above referenced tariff pages proposed to decrease rates by $343,858 or 1.29% due to the effect of the 1986 Tax Reform Act; and

WHEREAS, the filing addresses the change in the corporate tax rate from 46% to 34% effective July 1, 1987 and does not address other changes in the tax code related to such items as excess deferred taxes, unbilled revenue and bad debt, etc.; and

WHEREAS, Concord Electric Company states that the impact of the latter changes cannot reasonably be determined at this time; and

WHEREAS, the Commission has reviewed this filing and has determined that the proposed rate decrease is in the public good; it is

ORDERED, that the following tariff pages shall become effective with bills rendered on or after July 1, 1986:

CONCORD ELECTRIC COMPANY

First Rev. Page 21

Superseding Original Page 21 First Rev. Page 22

Superseding Original Page 22 First Rev. Page 25

Superseding Original Page 25 First Rev. Page 27

Superseding Original Page 27 First Rev. Page 28

Superseding Original Page 28 First Rev. Page 32

Superseding Original Page 32 First Rev. Page 35

Superseding Original Page 35 First Rev. Page 38

Superseding Original Page 38

and it is

FURTHER ORDERED, that the filed rates will be subject to adjustment when the additional impacts of tax reform are determined; and it is

FURTHER ORDERED, that Concord Electric Company shall file detailed calculations of the additional impacts of tax reform within sixty days.

By order of the Public Utilities Commission of New Hampshire this thirtieth day of June, 1987.

==========

NH.PUC*06/30/87*[60270]*72 NH PUC 272*Exeter and Hampton Electric Company

[Go to End of 60270]

Re Exeter and Hampton Electric Company

DR 87-31
Order No. 18,729

New Hampshire Public Utilities Commission

June 30, 1987

ORDER accepting tariff revisions decreasing electric rates to reflect the reduction in the federal corporate income tax rate.

RATES, § 147 — Factors affecting reasonableness — Cost of service — Federal income tax reduction — Electric utility.

[N.H.] The rates of an electric utility were decreased to reflect the reduction in the federal corporate income tax rate; the rates were subject to adjustment should additional effects of tax reform be determined.

Page 272

By the COMMISSION:

ORDER

WHEREAS, on February 25, 1987 Exeter & Hampton Electric Company filed its Revised Tariff Pages NHPUC 15 -Electric as follows:

EXETER & HAMPTON ELECTRIC

COMPANY

Second Rev. Page 19B

Superseding First Revised page 19B Third Rev. Page 20

Superseding Second Revised Page 20 Third Rev. Page 22

Superseding Second Revised Page 22 Fourth Rev. Page 24

Superseding Third Revised Page 24 Second Rev. Page 25

Superseding First Revised Page 25 Second Rev. Page 30

Superseding First Revised Page 30 Second Rev. Page 34

Superseding First Revised Page 34 First Rev. Page 36

Superseding Original Page 36;

and

WHEREAS, the above referenced tariff pages proposed to decrease rates by $325,940 or

1.19% due to the effect of the 1986 Tax Reform Act; and

WHEREAS, the filing addresses the change in the corporate tax rate from 46% to 34% effective July 1, 1987 and does not address other changes in the tax code, related to such items as excess deferred taxes, unbilled revenue and bad debt, etc.; and

WHEREAS, Exeter & Hampton Electric Company states that the impact of the latter changes cannot reasonably be determined at this time; and

WHEREAS, the Commission has reviewed this filing and has determined that the proposed rate decrease is in the public good; it is

ORDERED, that the following tariff pages shall become effective with bills rendered on or after July 1, 1986:

EXETER & HAMPTON ELECTRIC

COMPANY

Second Rev. Page 19B

Superseding First Revised Page 19B Third Rev. Page 20

Superseding Second Revised Page 20 Third Rev. Page 22

Superseding Second Revised Page 22 Fourth Rev. Page 24

Superseding Third Revised Page 24 Second Rev. Page 25

Superseding First Revised Page 25 Second Rev. Page 30

Superseding First Revised Page 30 Second Rev. Page 34

Superseding First Revised Page 34 First Rev. Page 36

Superseding Original Page 36;

and it is

FURTHER ORDERED, that the filed rates will be subject to adjustment when the additional impacts of tax reform are determined; and it is

FURTHER ORDERED, that Exeter & Hampton Electric Company shall file detailed calculations of the additional impacts of tax reform within sixty days.

By order of the Public Utilities Commission of New Hampshire this thirtieth day of June, 1987.

==========

NH.PUC*06/30/87*[60271]*72 NH PUC 274*Fuel Adjustment Clause

[Go to End of 60271]

72 NH PUC 274

Re Fuel Adjustment Clause

Applicants: Concord Electric Company, Exeter and Hampton Electric Company, Granite State Electric Company, and Connecticut Valley Electric Company

DR 87-101
Order No. 18,731

New Hampshire Public Utilities Commission

June 30, 1987

ORDER revising the fuel adjustment clause rates of electric utilities.

---

1. AUTOMATIC ADJUSTMENT CLAUSES, § 7 — Cost recovery clauses — Fuel adjustment clause — Effective period — Electric utility.

[N.H.] The commission agreed to receive evidence on an electric utility's proposal to change its semiannual fuel adjustment clause to an annual fuel adjustment clause; it was found that the proposed change appeared to be reasonable because (1) it would smooth out any increases realized over a six month period that may be due to extraordinary occurrences, such as a plant outage, and (2) the utility had stable fuel costs. p. 274.

2. AUTOMATIC ADJUSTMENT CLAUSES, § 52 — Fuel adjustment clause revision — Estimates and forecasts — Projected oil price increase — Electric utility.

[N.H.] The fuel adjustment clause rate of an electric utility was revised to reflect forecasted increases in oil costs; the oil conservation adjustment rate and qualifying facility rate of the utility were also revised. p. 275.

3. AUTOMATIC ADJUSTMENT CLAUSES, § 49 — Fuel adjustment clause revision — Estimates and forecasts — Overcollections — Electric utilities.

[N.H.] The fuel adjustment clause rates of two electric utilities were revised to reflect (1) the fact that the existing fuel charge rates contained overcollections of prior period rates that were greater than the filed overcollections of prior period rates, and (2) estimated maintenance outages on the low cost generating units from which the companies purchase power. p. 275.

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, Morris Silver, Esquire

By the COMMISSION:

REPORT

The Public Utilities Commission held a duly noticed hearing at its office in Concord on June 23, 1987 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 1987.

I. Connecticut Valley Electric Company, Inc. (Conn. Val.)

[1] On June 1, 1987, filed a FAC rate for the period July — December, 1987, of $1.14 per 100 KWH.

Conn. Val. presented three witnesses to support its filing. Mr. Clifford E. Giffin testified on the Central Vermont System Energy rates which Conn. Val. pays, Mr. C. J. Frankiewicz testified to the calculation of the FAC and the reconciliation of the prior period. Mr. William J. Deehan testified on the sales forecast for the last half of 1987.

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

1. sales forecast;

2. lost and unaccounted for and company use;

Page 274

3. the purchase of energy from the solid waste project (a small power producer);

4. rate stability of Conn. Val.'s Fuel Adjustment Clause (FAC); and

5. an annual FAC.

During the hearing Conn. Valley indicated a desire to change its semi-annual FAC to an annual FAC. According to Conn. Val. witness, the generation mix of its wholesale energy supplier, Central Vermont Public Service Co., is not subjected to price fluctuations caused by changes in fossil fuel costs. This is because a majority of its capacity comes from nuclear power plants and contracted energy purchases which have relatively fixed prices.

The Commission discussed the concept of an annual FAC in its report to Supplemental Order No. 18,537. In said Order we noted that a change in Conn. Val.'s FAC period from semi-annual to annual "... will smooth out the increases realized over the shorter (six month) period when there may be an extraordinary occurrence such as Vermont Yankee's shut down for refueling" (Report at 3). With this reasoning along with the foregoing discussion on stability of Conn. Val.'s fuel costs, the move to an annual FAC appears to be reasonable. Conn. Val. witnesses state that the next FAC filing (Jan. — July, 1988) will include such a proposal. The Commission will receive evidence on the merits of such a change in the docket opened to review said FAC filing.

II. GRANITE STATE ELECTRIC COMPANY

[2] Granite State Electric Company (Granite State) made its July — December 1987 filing for a FAC and an Oil Conservation Adjustment rate ("OCA") on June 1, 1987. Granite State had a FAC surcharge credit of $(0.088) per 100 KWH in effect for January 1, 1987 through June 1, 1987 and an OCA rate credit of $0.015 per 100 KWH in effect for the same period.

The rates requested on June 1, 1987 were $0.586 per 100 KWH for FAC and $0.125 per 100 KWH for OCA. In addition, Granite State filed revised Qualified Facilities tariff rates.

Issues raised during a duly noticed June 23, 1987 hearing, scheduled to review the FAC filing, included:

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

2. the sale projection for the period July — December, 1987;

3. line loss and company electric use; and

4. the effect of escalating oil prices has on New England Power Co.'s (NEPCO), Granite State's major supplier of energy generation mix.

According to a Granite State witness, oil fired generation represents twenty-five percent of NEPCO's generation mix. The increase in oil costs forecasted for the July — December, 1987 FAC period as well as the increase of over estimated oil prices during the first half of 1987 caused the substantial increase in the FAC rate for the upcoming period. This infers that, unlike Conn. Val., the change in fuel costs has a substantive effect on Granite State's FAC.

Based on the evidence provided, the Commission will approve the filed FAC rate of $0.586 per 100 KWH, the OCA rate of $0.125 per 100 KWH, and the revised QF rates as filed.

III. Concord Electric Company and Exeter & Hampton Electric Company

[3] Concord Electric Company ("Concord") and Exeter & Hampton Electric Company ("Exeter & Hampton") (collectively the "companies") presented three witnesses, Susan G. Hersey, George R. Gantz and Keith H. Durand.

Concord's FAC in effect during the period January 1, 1987 through June 1, 1987 was a credit of ($0.896) per 100 KWH and

Page 275

Exeter and Hampton's FAC was a credit of ($0.872) per 100 KWH during the same period. On June 18, 1987 these two companies filed revised FAC surcharge credits of ($0.685) and ($0.626) per 100 KWH for Concord and Exeter & Hampton respectively (exclusive of franchise tax effects).

On June 1, 1987 the companies filed testimony and exhibits which supported the proposed revision to their respective FAC surcharge credits.

On June 18, 1987 the companies filed the above mentioned revised FAC rates which reflect updated fuel costs and actual May, 1987 data. The revisions reduced the FAC from the originally filed surcharge credits of ($0.556) per 100 KWH and ($0.478) per 100 KWH for Concord and Exeter & Hampton respectively.

Both companies state the increases in FAC over the current period results from the fact that the present fuel charge rate contains an overcollection of prior period rates (Oct. — Dec. 1986) which is more than the filed overcollection of prior period rates (Jan. — June 1987), as well as estimated maintenance outages on Unitil Power Corp.'s (the companies major source of power) low cost generating units.

The following issues were discussed during the June 24, 1987 hearing:

1. The stability of the Companies FAC rates;

2. The overall effect on rates when both the Purchase Power Adjustment Clause (PPAC) and

FAC approved in rates;

3. Qualified facility (small power producer) purchases, specifically Ultra Power and the projected in service date;

4. Sales forecasts for the companies; and

5. Estimated cost of oil.

In testimony a witness for the companies provided information which displayed a slight overall decrease when the PPAC (DR 87-102) and the FAC were aggregated in customer rates. This indicates that on whole the companies' rates will have continuity. This is commendable in a period where oil prices are rising.

The Companies witness Durham stated that the Companies wholesale supplier of energy, Unitil Power Co., has a substantial amount of its generation mix under contract with relatively fixed costs. The percentage of generation mix which is dependent on oil has little effect on the fuel costs because the oil fired generation utilized by Unitil Power Co. are peaking units and are run relatively less than base load plants.

This leads to the issue of an annual FAC versus semi-annual. With stability of fuel costs built into the wholesale power costs the companies may wish to look at an annual FAC and PPAC much the same as Conn. Val. proposes.

The Companies are to address this issue in the next (Jan. — June 1988) FAC.

Based on the evidence provided, the Commission will approve the filed rate of ($0.685) per 100 kwh and ($0.626) 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 8th Revised Page 20A of Concord Electric Company tariff, NHPUC No. 10 — Electricity, providing for a fuel surcharge credit of ($0.685) per 100 KWH for the months of July through December, 1987, be, and hereby is, rejected; and it is

FURTHER ORDERED, that 34th Revised Page 19A of Exeter & Hampton Electric Company tariff, NHPUC No. 15 — Electricity, providing for a fuel surcharge credit of ($0.626) per 100 KWH for the months of July through December, 1987, be, and hereby is, rejected; and it is

FURTHER ORDERED, that Concord

Electric Company and Exeter & Hampton Electric Company file signed tariff pages reflecting fuel surcharge credits of ($0.685) per 100 kwh and ($0.626) per 100 kwh respectively, said rates to be temporary pending final determination of Commission Docket DR 86-196; and it is

FURTHER ORDERED, that 19th Revised Page 57 of Granite State Electric Company tariff,

NHPUC No. 10 — Electricity, providing for an oil conservation adjustment of $.125 per 100 KWH for the months of July through December, 1987, be, and hereby is, permitted to go into effect for July 1, 1987; and it is

FURTHER ORDERED, that 23rd Revised Page 30 of Granite State Electric Company tariff, NHPUC No. 10 — Electricity, providing for a fuel surcharge of $0.586 per 100 KWH for the months of July through December 1987, be, and hereby is, permit- ted to go into effect for July 1, 1987; and it is

FURTHER ORDERED, that 8th 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, 1987; and it is

FURTHER ORDERED, that 110th Revised Page 18 of Connecticut Valley Electric Company, Inc.'s tariff, NHPUC No. 4 — Electricity, providing for a fuel surcharge of $1.14 per 100 KWH for the months of July through December 1987, be, and hereby is, permitted to go into effect for July 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 thirtieth day of June, 1987.

==========

NH.PUC*06/30/87*[60272]*72 NH PUC 277*Public Service Company of New Hampshire

[Go to End of 60272]

72 NH PUC 277

Re Public Service Company of New Hampshire

DR 87-94
Order No. 18,734

New Hampshire Public Utilities Commission

June 30, 1987

ORDER accepting a revised energy cost recovery mechanism for an electric utility.

---

1. AUTOMATIC ADJUSTMENT CLAUSES, § 11 — Cost recovery clauses — Energy cost recovery mechanism — Cost of oil — Electric utility.

[N.H.] An electric utility was permitted to revise its energy cost mechanism rate to reflect historical and projected increases in the cost of oil. p. 278xx. 2. AUTOMATIC ADJUSTMENT CLAUSES, § 7 — Cost recovery clauses — Energy cost recovery mechanism — Electric utility.

[N.H.] An electric utility was permitted to include in its revised energy cost recovery

mechanism a refund of front loaded rates paid to a qualifying facility that the utility expects to receive pursuant to the renegotiation of its contract with the qualifying facility; however, the utility was required to file a copy of the renegotiated contract for commission review once it is ratified. p. 278.

3. AUTOMATIC ADJUSTMENT CLAUSES, § 7 — Cost recovery clauses — Energy cost recovery mechanism — Adjustment for unforecasted outages — Electric utility.

[N.H.] In a proceeding to revise the energy cost recovery mechanism of an electric utility, the utility was required to adjust the net outage adjustment incentive feature of its ECRM to account for an unforecasted extended outage at one of its generating plants. p. 279.

APPEARANCES: Eaton W. Tarbell, Jr., Esquire of Sulloway, Hollis and Soden, and Thomas B. Getz, Esquire representing

Page 277

Public Service Company of New Hampshire; Michael W. Holmes, Esquire, Consumer Advocate; Daniel D. Lanning and Mark Collin for NHPUC Staff.

By the COMMISSION:

REPORT

This docket was initiated by a petition filed on May 2, 1987, by Public Service Company of New Hampshire (PSNH), a public utility providing electricity in the State of New Hampshire. The original petition requested a change in the ECRM rate from the January through June, 1987, rate of $2.630/100 KWH to a rate of $3.222/100 KWH for July through December 1987. On June 18, 1987, PSNH revised this request from the rate of $3.222/100 KWH to $3.177/100 KWH.

A duly noticed hearing was held at the Commission's office in Concord on June 5, 1987, at which time PSNH made available nine (9) witnesses.

[1] The increase of the filed ECRM rate over the current ECRM rate (July through December 1986) is predominately due to: an increase in the cost of oil during the first half of 1987 and projected into the second half of 1987. This increase in the cost of oil is the predominant cause of the $7,131,536 under collection during the period January through June 1987.

Prior to the hearings the Commission staff issued numerous data requests. The Company's responses to these requests were submitted and marked as exhibits in the hearing. In addition, the parties in the proceedings held a duly noticed prehearing conference where issues in the ECRM filing were defined and narrowed.

During the course of the hearings, several aspects of the filings were explored, some of which were:

1. A change in the long term small power producer contract with Spaulding Hydro;

2. Extended outage at Merrimack Unit 2;

3. The escalating cost of oil; and

4. The refuse derived fuel (RFD) burned at Merrimack Station.

Several of these items merit further discussion.

I. SPAULDING HYDRO

[2] Spaulding Hydro, a small power producer, is a hydro-electric generating facility with a private long term contract with PSNH which includes front end loaded rates. Under this contract, PSNH has an 10obligation to buy power produced by Spaulding Hydro at a price which is initially higher than avoided cost and tapers off toward the end of the contract term below avoided cost to repay ratepayers for the initial front-end loading.

Currently PSNH and Spaulding Hydro have entered into discussions with intentions of renegotiating the contract terms and expanding the capacity of the Spaulding Hydro facility. The current proposals presented by PSNH in this docket, include a change in Spaulding Hydro's front end loaded rates and a price for expanded output which will be consistent with the price paid by PSNH for Spaulding Hydro's current output.

As part of the renegotiation process Spaulding Hydro has agreed to refund the portion of its long term rates which were front end loaded. In the instant ECRM filing PSNH has estimated this refund and returned it to its ratepayers through the ECRM component.

The Commission will allow said refund included in the current ECRM filing. However, we will require that PSNH file a copy of the renegotiated contract once it is ratified. At that time we will review the agreement and, if necessary, allow further hearings on the issue in the January through June 1988 ECRM proceedings.

II. MERRIMACK OUTAGE

[3] During the first half of 1987 Merrimack Unit 2 had a planned maintenance outage which was forecasted in ECRM for the period but which was extended two weeks beyond the targeted period. It was also revealed that the instant ECRM filing did not include an adjustment to the Net Outage Adjustment incentive feature to account for the extended outage.

Per PSNH testimony the extended outage will be accounted for in the update and passed through ECRM's over/under collection in a subsequent period. The Commission will require a full reconciliation of this in the next ECRM proceeding (January through June, 1988). III. CONCLUSION

Based on the evidence provided, the Commission will accept the revised ECRM component of $0.03177 per KWH.

Our order will issue accordingly.

ORDER

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

ORDERED, that PSNH shall file revised tariff pages setting an ECRM rate of $3.177/100

KWH for July through December 1987; and it is

FURTHER ORDERED, that the Small Power Producer rates for the hourly period categories of: "On-Peak" at $0.0435/ KWH; "Off-Peak" at $0.0345/KWH; and "All" at $0.0384 KWH for July through December 1987, be, and hereby are, ap- proved.

By Order of the Public Utilities Commission of New Hampshire this thirtieth day of June, 1987.

==========

NH.PUC*07/01/87*[60273]*72 NH PUC 279*Nuclear Decommissioning Financing Committee

[Go to End of 60273]

72 NH PUC 279

Re Nuclear Decommissioning Financing Committee

DF 87-114
Order No. 18,735

New Hampshire Public Utilities Commission

July 1, 1987

ORDER establishing procedures for the reimbursement of expenses of the Nuclear Decommissioning Financing Committee.

NUCLEAR PLANT DECOMMISSIONING, § 18 — Financing costs — Reimbursement of expenses.

[N.H.] In response to a petition for the establishment of procedures for the reimbursement of expenses incurred by the Nuclear Decommissioning Finance Committee, the commission approved a procedure for reimbursement of expenses, found that the expenses incurred were reasonable and proper, and ordered the preparation of an assessment against the owner of a nuclear electric generating facility in an amount equal to the expenses incurred.

By the COMMISSION:

ORDER

WHEREAS, on June 10, 1987, the Nuclear Decommissioning Financing Committee (NDFC) submitted a request to establish procedures for reimbursement of expenses of the NDFC pursuant to RSA 162-F:18; and

WHEREAS, the procedure for payment of expenses is set forth as follows:

(a) That all Committee payments and income be processed through the Revolving Fund approved by Governor and Council; and, that expenditures for "consultant services" be limited to

those amounts contained in contracts approved by Governor and Council.

(b) That the Commission delegate approval of monthly billings to the Chairman. The Committee will, along with monthly bills, provide the Chairman with financial reports showing fund status and individual consultant contract status. That all Committee approved bills will be submitted, on or before the 15th of each month, to the Chairman for his review/ approval. Approval by the Chairman shall constitute fulfillment of the requirements of RSA 162-F:18.

(c) That the Chairman shall promptly notify the Treasurer of all the bills that he has approved so that payments may be made on a timely basis.

(d) The Chairman shall prepare an assessment against New Hampshire Yankee for an amount equal to any monthly billing which he approves;

and

WHEREAS, the Committee in support of the petition sets forth:

1. RSA 162-F creates the Nuclear Decommissioning Financing Committee and outlines a procedure for establishing a fund for purposes of financing the eventual decommissioning of a Nuclear Electric Generating Facility operating within this state.

2. The statute requires that the Committee conduct a series of public hearings prior to the establishment of a decommissioning fund, and in October, 1986, the New Hampshire Superior Court ruled that such hearings conducted by the Committee must be "Adjudicatory".

3. RSA 162-F: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.

4. The Nuclear Decommissioning Financing Committee has retained the services of technical consultants, an administrative assistant and legal counsel to assist it in conducting the hearings required by the statute.

5. With approval of Governor and Council the Treasurer has established a $25,000.00 Revolving Fund within the New Hampshire Integrated Financial System (NHIFS) which will allow for an automated accounting of all income and expenditures.

6. Under this procedure, the Treasurer will create and maintain manually a ledger system for tracking expenditures against contracts and monthly statements detailing receipts/expenditures overall, and with respect to individual contracts which will be provided to the Committee and its members.

7. The Committee has established a procedure for the payment of expenses of the consultants to the Committee to be charged against the Revolving Fund and has voted to petition the Public Utilities Commission to establish the following procedure to reimburse the Revolving Fund by a charge against the joint owners of the Seabrook Facility;

and

WHEREAS, the Commission's function under RSA 162-F:18 is a limited one and similar to

the Commission Chairman's function under RSA 107-B. The statute, RSA 162-F:18, does not expressly provide the Commission with authority to conduct an independent evaluation of the NDFC's expenses, but under its general investigatory powers it is appropriate to determine whether the requested expenses appear reasonable. If the expenses appear reasonable, the action of the Commission becomes somewhat ministerial in nature; and

WHEREAS, the Commission reviewed

Page 280

the procedure established by the NDFC and finds said procedures are reasonable and proper and approve same. The Commission further finds the expenses incurred are reasonable and proper and shall be assessed against New Hampshire Yankee for payment and/or reimbursement; it is hereby

ORDERED, that the Procedure for Reimbursement of Expenses of the Nuclear Decommissioning Financing Committee as set forth in the NDFC's petition is approved; and it is

FURTHER ORDERED, that the Chairman of the New Hampshire Public Utilities Commission prepare an assessment against New Hampshire Yankee in an amount equal to the expenses incurred by the NDFC to date and monthly thereafter.

By Order of the Public Utilities Commission of New Hampshire this first day of July, 1987.

==========

NH.PUC*07/01/87*[60274]*72 NH PUC 281*Wolfeboro Municipal Electric Department

[Go to End of 60274]

72 NH PUC 281

Re Wolfeboro Municipal Electric Department

DR 87-99
Order No. 18,736

New Hampshire Public Utilities Commission

July 1, 1987

ORDER directing an electric utility to file a revised tariff page showing the correct surcharge rate for its purchased power cost adjustment.

AUTOMATIC ADJUSTMENT CLAUSES, § 1 — Purchase power cost adjustment — Electric utility.

[N.H.] A municipal electric department, which had incorrectly computed a surcharge for a purchase power cost adjustment, was ordered to file a revised tariff page showing the correct surcharge rate and to provide notification to its customers of the revised surcharge.

By the COMMISSION:

ORDER

WHEREAS, Wolfeboro Municipal Electric Department, as a result of a decision by the Federal Energy Regulatory Commission in its Docket No. ER 87-227, will receive an increase from one of its wholesale suppliers, Public Service Co. of New Hampshire; and

WHEREAS, said increase is effective on May 2, 1987, subject to refund; and

WHEREAS, on May 26, 1987 Wolfeboro Municipal Electric Department filed its Tariff Page 11C-1 computing a surcharge for the Purchase Power Cost Adjustment of $.00127 per kilowatt hour; and

WHEREAS, upon investigation the Commission finds the correct surcharge rate to be $.0127 per kilowatt hour; it is

ORDERED, that Wolfeboro Municipal Electric Department Tariff Page 11C-1 be, and hereby is rejected, and it is

FURTHER ORDERED, that Wolfeboro Municipal Electric Department file a revised Tariff Page 11C-1 showing a surcharge rate of $.0127 per kilowatt hour, effective May 15, 1987; and it is

FURTHER ORDERED, Wolfeboro Municipal Electric Department provide notification to its customers of said revised surcharge.

By order of the Public Utilities Commission of New Hampshire this first day of July, 1987.

==========

NH.PUC*07/02/87*[60275]*72 NH PUC 282*Nuclear Emergency Planning

[Go to End of 60275]

72 NH PUC 282

Re Nuclear Emergency Planning

DE 87-129
Order No. 18,737

New Hampshire Public Utilities Commission

July 2, 1987

ORDER assessing the costs of radiological emergency response planning against an electric utility.

ATOMIC ENERGY — Radiological emergency response planning — Cost assessments —

Electric utility.

[N.H.] Pursuant to the authority granted to the chairman of the commission by state statute RSA 107-8, costs associated with the preparation and implementation of a radiological emergency response plan for the Seabrook nuclear generating facility were assessed against the electric utility operator of the plant; the chairman concluded that the budgeted costs included in the request for assessment were related to preparing the plan and providing equipment and materials necessary for its implementation.

By the COMMISSION:

REPORT

On June 23, 1987, 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, of the estimated costs of the continued preparation and implementation of the radiological emergency response plans for the Seabrook Station Nuclear Power Plant for the Fiscal Year 1988 commencing July 1, 1987. The request totals $777,117 and includes the following costs:

Personnel Services $165,291 Current Expenses 51,551 Transfer to Gen. Services 22,209 Equipment 66,049 Indirect Costs 26,322 Audit Set Aside 1,542 Transfer to Other State Agencies 143,767 Other Personnel Services 63,086 Benefits 39,222 In-State Travel 12,633 Out-of-State Travel 11,433 Consultants 114,586 Vehicle Lease 4,088 Local Training Costs 45,900 Training State Departments 9,438

TOTAL ASSESSMENT $777,117

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

107-B:1 Nuclear Emergency Response Plan.

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

107-B:3 Assessment.

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

The chairman's function under this chapter is a limited one. In Re Hollingsworth, 122 N.H. 1028 (1982), the New Hampshire Supreme Court upheld then chairman's finding that the statute did not provide the

chairman with authority to conduct an independent evaluation of Civil Defense's cost data or to challenge its scope or amount. The Court stated at p. 1033 as follows:

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

As Chairman, I therefore must determine whether the costs contained in the request are related to "preparing the plan and providing equipment and materials necessary to implement it". The preparation of a nuclear emergency response plan began in 1981 after the passage of RSA 107 B. The following reports and orders have been issued pursuant to RSA 107-B:

Order No. 15,412 DE 81-304

January 5, 1982

Order No. 17,078 DE 84-117

June 18, 1984

Order No. 17,947 DE 85-380

November 14, 1985

S. Order No. 18,024 DE 85-380

December 27, 1986

Order No. 18,510 DE 86-306

December 18, 1986

Order No. 18,582 DE 87-25

March 2, 1987

According to Civil Defense's request and the data submitted therewith, the plan is still being prepared and will not be complete until the required federal regulatory approvals are secured and an operating license secured. The process necessary to effect the issuance of an operating license involves a series of approvals from various federal agencies as follows:

1. Recommendation of approval of formally submitted State Radiological Emergency Response Plans by the Federal Emergency Management Agency (FEMA) to the Nuclear Regulatory Commission (NRC).

2. Concurrence between NRC and FEMA staff of adequacy and effectiveness of State

Radiological Emergency Response Plans developed by the NHCDA and a submission by the NRC staff to the Atomic Safety and Licensing Board as one determinant in the issuance of an operating license.

Civil Defense submits that the above-stated costs represent the personnel and equipment costs necessary to complete the preparation of the Plan and obtain the requisite approvals, as well as costs necessary to implement the Plan.

Pursuant to RSA 107-B:1, I have reviewed Civil Defense's request and supporting data. I find that the budget costs contained therein relate to preparing the plan and providing equipment and materials necessary to implement it. As stated above, these costs include both equipment and personnel costs. I therefore will approve the assessment of $777,117.

Finally, it should be noted that my findings herein were made without a public hearing. There is no hearing requirement in RSA 107-B:1.

Page 283

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 $777,117 be assessed against New Hampshire Yankee Division of Public Service Company of New Hampshire pursuant to RSA 107-B.

By Order of the Public Utilities Commission of New Hampshire this second day of July, 1987.

==========

NH.PUC*07/02/87*[60276]*72 NH PUC 284*Public Service Company of New Hampshire

[Go to End of 60276]

72 NH PUC 284

Re Public Service Company of New Hampshire

DF 87-4

Third Supplemental Order No. 18,738

New Hampshire Public Utilities Commission

July 2, 1987

MOTION for rehearing of order addressing scope of proceedings related to the financing of an electric utility; denied.

SECURITY ISSUES, § 132 — Scope of proceedings — Commission discretion.

[N.H.] The commission refused to rehear its decision developing a scope of review for a proceeding relating to financings of an electric utility, because the scope of review was appropriate to the circumstances, and the commission had followed guidance provided by the state supreme court, which had specifically recognized the commission's discretion on how to review a financing, by extending its review beyond the terms and conditions of the financing to consider rate impacts and alternatives to the proposed course of action, recognizing that the determination of whether a financing was in the public interest necessarily varied with circumstances.

By the COMMISSION:

On April 3, 1987, the Commission issued a Report and Order No. 18,626 (72 NH PUC 124) that addressed the scope of the proceedings herein. On April 23, 1987, the Consumer Advocate filed a Motion for Rehearing of that report and order. In this report and the order attached hereto, the Commission denies that motion and reaffirms the scope of proceedings that it set in Report and Order No. 18,626.

The Consumer Advocate's motion stated that the Commissions Order No. 18,626 is unlawful because it fails to mandate review of the bankruptcy option, does not properly consider the company's level of capitalization, does not consider changes of facts, and violates due process. Based upon these arguments the Consumer Advocate alleges that the order violates the requirements of RSA 369:1, RSA 369:4, RSA 541-A:16 and the New Hampshire Constitution, Part I, Article 15.

As we developed in our Report and Order 18,626, the New Hampshire Supreme Court has stated that PUC review of financings under RSA 369:1 and 369:4 must extend beyond the terms and conditions of the financings. It has given us guidance on looking into rate impacts, and on looking into alternatives to the proposed course of action. It has also clearly recognized that the determination of whether a financing is in the public interest "will necessarily vary with circumstances". Re Seacoast Anti-Pollution League, 125 N.H. 465, 474, 482 A.2d 509 (1984).

Report and Order No. 18,626 follows this guidance to develop a scope for this proceeding that is appropriate to the circumstances. In that Report and Order, the Commission addressed most of the Consumer Advocate's concerns. With regard to bankruptcy, the Commission completely addressed that issue in its Report and Order No. 18,626 and shall simply refer the Consumer Advocate to that order in answer to his bankruptcy arguments in his Motion for

Rehearing. Other issues that the Consumer Advocate raises are addressed below.

With regard to capitalization, the Commission has indicated that it shall consider and look at:

whether it is economically feasible for PSNH to engage in the proposed financing including the determination of the level of revenues necessary to support the additions to the capital structure which results from successful completion proposed financing.

By determining the levels of revenues necessary to support the addition to the capital structure, the Commission is looking at the rate impact. Coupled with that rate impact review is a review of alternatives to the proposed non-Seabrook construction. The Commission believes this review adequately addresses the duty to review rate impacts and the alternatives in the circumstances of this application.

With regard to the Consumer Advocate's concern over change of factual circumstances, the Commission believes the scope of review that is provided in this proceeding shall deal with all the relevant facts — changed or unchanged — for this particular financing. Cases that deal with the Seabrook nuclear plant involve other generation choices by the company, and necessarily involve more complex and difficult choices and alternatives. The Commission notes again that those more difficult choices and complex issues will be addressed in the parallel proceeding involving financing for the Seabrook nuclear plant.

The Commission does not understand the Consumer Advocate's assertion that the residential ratepayers are denied the protection of the New Hampshire Constitution, Part I, Article 15 due to the Commission's use of administrative efficiency. As the Commission indicated in its Report and Order, the different types of financing pursued by PSNH require different types of review which are being handled in different dockets. As is discussed above, the PUC's discretion on how to review a financing is specifically recognized by the New Hampshire Supreme Court. Furthermore, the portion of the New Hampshire Constitution that the Consumer Advocate cites deals with the rights of the person accused of a crime. The Commission is unable to understand how that portion of the New Hampshire Constitution is involved in this rate proceeding.

The Commission also is unclear over the Consumer Advocate's concern over the "due process requirements of RSA 541-A:16". That is a general statute providing a list of statutory due process requirements applicable to this proceeding. The Consumer Advocate has not chosen any particular requirement, but makes the blanket allegation that the Commission was not looking to fulfill the requirements of that statute. All that the Commission has done to date is to receive filings on the issues in the case and then provide a statement of the issues. Under RSA 541-A:16 III. (d), parties have a right to receive a statement of issues in the case. Thus, the Commission cannot comprehend how specifically providing a matter required by the statute shows an intent to not follow that statute.

Our Order will issue accordingly.

SUPPLEMENTAL ORDER

Based on the foregoing report regarding motion for rehearing, which is incorporated herein by reference, the Commission orders that the Consumer Advocate's Motion for Rehearing is denied.

By Order of the Public Utilities Commission of New Hampshire this second day of July, 1987.

DISSENTING OPINION OF COMMISSIONER AESCHLIMAN

I would grant the rehearing requested by the Consumer Advocate. The reasons for my granting the rehearing and the scope of proceeding that I would provide are developed in my dissenting Opinion of April 3, 1987 attached to Commission Order No. 18,626.

==========

NH.PUC*07/02/87*[60277]*72 NH PUC 286*Public Service Company of New Hampshire

[Go to End of 60277]

72 NH PUC 286

Re Public Service Company of New Hampshire

DE 87-75
Order No. 18,739

New Hampshire Public Utilities Commission

July 2, 1987

ORDER nisi authorizing an electric utility to cross public waters with underwater electrical lines.

CERTIFICATES, § 102 — Electric — Underwater lines.

[N.H.] An electric utility was conditionally authorized to cross public waters with underwater electrical lines, to permit a crossing comprising one line that was essential in serving the needs of a customer, because the crossing was in the public good, the lines on both sides of the crossing were to be constructed and maintained pursuant to easements or agreements for that purpose, and the appropriate permits had been received for the crossing.

By the COMMISSION:

ORDER

WHEREAS, on April 20, 1987, the Public Service Company of New Hampshire (PSNH) filed with this Commission its petition under RSA 371:17 seeking license to cross publicwaters of Monomonac Lake in the Town of Rindge, New Hampshire; and

WHEREAS, such crossing comprises one 34.5 kV electric line to be operated at 2.4 kV, which is essential in serving the needs of a customer on Tico Island; and

WHEREAS, PSNH avers that lines on both sides of the crossing will be constructed and maintained pursuant to easements or agreements for that purpose and that permits have been received from the State of New Hampshire Wetlands Board and the Water Supply and Pollution Control Commission for the crossing; and

WHEREAS, the definition of "public waters" contained in RSA 371:17 includes "such streams or portions thereof as the commission may prescribe"; and

WHEREAS, the waters to be crossed by the proposed line are tributary to the main body of Monomonac Lake; it is therefore

ORDERED, that for the limited purposes of RSA 371:17 and the proposed construction of an underwater crossing, the affected portion of Monomonac Lake is prescribed to be public water; and

WHEREAS, the Commission finds preliminarily that such crossings appear to be in the public good; but feels the public must be given an opportunity to respond in support of, or in opposition thereto; it is

ORDERED, that all persons desiring to respond to this PSNH petition be notified that they may submit their comments in writing or file a written request for public hearing before this Commission no later than July 17, 1987; and it is

FURTHER ORDERED, that such notice be given via one-time publication in a newspaper having wide circulation in the affected area, such publication to be no later than July 10, 1987; and documented by affidavit to be made on a copy of this order and filed with the Commission; and it is

FURTHER ORDERED NISI that PSNH be, and hereby is, granted license under RSA 371:17 et seq to construct, and maintain a 34.5kV underwater line and operate it at 2.4 KV, such line identified in maps and drawings (Exhibit 1 and 7649-337) on file with this Commission; and it is

FURTHER ORDERED, that all construction shall meet the requirements of the National Electrical Safety Code; and it is

FURTHER ORDERED, that said authority shall become effective 20 days from the date of this order unless a hearing is requested as provided herein or the Commission otherwise directs prior to that date.

By order of the Public Utilities Commission of New Hampshire this second day of July, 1987.

==========

NH.PUC*07/08/87*[60278]*72 NH PUC 287*New England Telephone and Telegraph Company, Inc.

[Go to End of 60278]

72 NH PUC 287

Re New England Telephone and Telegraph Company, Inc.

DE 87-118
Order No. 18,741

New Hampshire Public Utilities Commission

July 8, 1987

ORDER revising the exchange boundaries of a local exchange telephone carrier.

SERVICE, § 445 — Telephone — Exchange areas and boundaries — Local exchange carrier.

[N.H.] A local exchange telephone carrier was permitted to revise its exchange boundaries; it was concluded that the revision would allow the carrier to serve the affected areas at lesser cost and with reduced administrative burdens.

By the COMMISSION:

ORDER

WHEREAS, on June 22, 1987, the New England Telephone & Telegraph Company, Inc. (NET) filed with this Commission its proposal to revise the exchange boundaries in Merrimack, Milford and Nashua, New Hampshire; and

WHEREAS, such changes are claimed to allow NET to better serve potential customers in affected areas at lesser cost and reduced administration; and

WHEREAS, staff investigation supports the NET claim of higher costs of providing service via the Milford Exchange resulting from added cable plant as well as new carrier systems compared to the need for only expansion of existing carrier systems in the Merrimack Exchange; and

WHEREAS, staff also has verified the ease of account administration in the proposed handling of the development which encompasses both Nashua and Merrimack exchanges; and

WHEREAS, the Commission finds that such changes are in the public interest; it is

ORDERED, that Part A, Section 5, 18th Revised Sheet 55 and 12th Revised Sheet 57 of Tariff No. 75, be, and hereby are approved for effect on July 22, 1987; and it is

FURTHER ORDERED, that provisions of Puc 1601.05(j) and Puc 1603 are waived for this filing, there being no customers immediately affected.

By order of the Public Utilities Commission of New Hampshire this eighth day of July, 1987.

==========

NH.PUC*07/08/87*[60279]*72 NH PUC 287*New England Telephone and Telegraph Company, Inc.

[Go to End of 60279]

72 NH PUC 287

Re New England Telephone and Telegraph Company, Inc.

DE 87-119
Order No. 18,742

New Hampshire Public Utilities Commission

July 8, 1987

ORDER revising the exchange boundaries of a local exchange telephone carrier.

SERVICE, § 445 — Telephone — Exchange areas and boundaries — Local exchange carrier.

[N.H.] A local exchange telephone carrier was permitted to revise its exchange boundaries; any affected customers unwilling to change exchanges would be allowed to remain in their current exchange.

By the COMMISSION:

ORDER

WHEREAS, on June 22, 1987, the New England Telephone & Telegraph Company Inc. (NET) filed with this Commission revisions to its Tariff No. 75 proposing that the

boundary between the Peterborough and Greenfield Exchanges be changed such that the northeast section of the former be conterminous with town boundaries; and

WHEREAS, such change affects the telephone service of eleven (11) Peterborough subscribers now served by the Greenfield exchange; and

WHEREAS, eight of these subscribers have expressed a desire to be served from their town of residence, one has indicated a preference to remain in the Greenfield exchange, the remaining showing no preference; and

WHEREAS, to make such change with minimal disruption of subscribers' telephone service, NET has proposed that any of the affected customers unwilling to change be "grandfathered" in the Greenfield Exchange; and

WHEREAS, the Commission finds such alignment of exchange and town boundaries in the public interest; and

WHEREAS, the Commission also finds that "grandfathering" those not wishing the change also acceptable; it is

ORDERED, that Part A, Section 5, 8th Revised Sheet 38 and 5th Revised Page 26 be, and hereby are approved for effect on July 22, 1987; and it is

FURTHER ORDERED, that affected customers be notified individually of the impact of this order; and it is

FURTHER ORDERED, that any existing Greenfield Exchange subscribers residing in the affected area of Peterborough desiring to retain Greenfield service will be "grandfathered"; and it is

FURTHER ORDERED, that provisions of Puc 1603 are waived.

By order of the Public Utilities Commission of New Hampshire this eighth day of July, 1987.

==========

NH.PUC*07/08/87*[60280]*72 NH PUC 288*Union Telephone Company

[Go to End of 60280]

72 NH PUC 288

Re Union Telephone Company

DF 87-54
Order No. 18,745

New Hampshire Public Utilities Commission

July 8, 1987

PETITION by telephone utility for authority to issue notes of indebtedness; granted.

SECURITY ISSUES, § 44 — Factors affecting authorization — Reasonableness — Terms.

[N.H.] A telephone utility was authorized to issue and sell, and from time to time renew, up to $800,000 of notes or other evidences of indebtedness payable less than twelve months from the date thereof, at current interest rates, because the proposed uses and rates for the requested borrowing were reasonable under all of the circumstances.

By the COMMISSION:

ORDER

WHEREAS, on March 30, 1987 Union Telephone Company (Union) filed with this Commission a petition pursuant to the provisions of N.H. Rev. Stat. Ann. §369:7 (1984), for approval to issue and sell, and from time to time renew, up to eight hundred thousand dollars ($800,000) of notes or other evidences of indebtedness payable less than twelve months from the date thereof; and

WHEREAS, Union's filing sets forth in detail the uses of the short term notes requested herein; and

WHEREAS, the Commission on April 20, 1987, issued data requests in connection with the Staff investigation of this matter; and

WHEREAS, Union, on May 11, 1987 filed responses to said data requests; and

WHEREAS, the Commission has investigated the entire matter including Union's

petition and the responses to staff data requests; and

WHEREAS, it appears that the proposed uses for the requested borrowing and the proposed

rate for said borrowing are reasonable under all of the circumstances and appear to be in the public good; it is hereby

ORDERED, that Union be, and hereby is, authorized to issue and sell, and from time to time renew, up to eight hundred thousand dollars ($800,000) of notes or other evidences of indebtedness payable less than twelve months from the date thereof at current interest rates and upon terms and conditions and for the purposes as set forth in Union's petition and its attached exhibits.

By order of the Public Utilities Commission of New Hampshire this eighth day of July, 1987.

==========

NH.PUC*07/10/87*[60245]*72 NH PUC 217*Public Service Company of New Hampshire

[Go to End of 60245]

72 NH PUC 217

Re Public Service Company of New Hampshire

DE 87-76
Order No. 18,703

New Hampshire Public Utilities Commission

July 10, 1987

ORDER nisi granting authorization to an electric utility to construct, operate and maintain two transmission lines over public waters.

ELECTRICITY, § 7 — Authorization for transmission lines — Reasons for licensing — Lines over water.

[N.H.] An electric utility was granted licenses to construct, operate and maintain two transmission lines over public waters because of the following: (1) the utility had already obtained easements; (2) there was no opposition from town or state agencies; (3) no formal action was necessary by the Site Evaluation Committee; (4) no certificate approval by the commission was necessary; (5) the licenses may be exercised without substantially affecting the public rights in public waters; and (6) the construction was found to be in the public good.

By the COMMISSION:

ORDER

WHEREAS, on April 22, 1987, Public Service Company of New Hampshire (petitioner) filed with this Commission a petition seeking licenses pursuant to RSA 371:17 for the two water crossings involving (A) construction of a 115 KV line across the Saco River adjacent to an existing 34.5 KV line and (B) removing an existing 34.5 KV line across Pequawket Pond and

replacing it with a double circuit 115 KV/34.5 KV line, both projects being in Conway, New Hampshire; and

WHEREAS, the petitioner's proposed construction is necessary as part of a new

115 KV line connecting the Company's White Lake and Saco Valley Substations to provide future load requirements; and

WHEREAS, the proposed overhead Pequawket Pond crossing is approximately 420 feet in overall length with approximately 220 feet over the water; and the proposed Saco River overhead crossing is approximately 705 feet in overall length with approximately 175 feet over the water, and

WHEREAS, the lines and supporting structures on each side of each crossing are or will be erected and maintained by the Petitioner pursuant to easements already obtained; and

WHEREAS, comments have been received without opposition from the Town of Conway and from the following State agencies; Division of Aeronautics, Department of Resources and Economic Development, Department of Environmental Services, Department of Transportation and the Attorney General's Office; and

WHEREAS, the petitioner states that the proposed 115 KV transmission line is the same line which was considered by the Site Evaluation Committee upon application of the Company for determination whether a Certificate of Site and Facility was required; and

WHEREAS, the Chairman of the Site Evaluation Committee in a letter dated June 1, 1974 stated that: "... the construction may take place without any formal action by the Site Evaluation Committee"; and

WHEREAS, the Secretary of the Public Utilities Commission in a letter dated July 5, 1974 stated: "... the proposed project does not require certificate approval by this agency."; and

WHEREAS, this Commission finds the licenses petitioned for may be exercised without substantially affecting the public rights in those public waters; and

WHEREAS, this Commission finds such construction to be in the public good; and

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

WHEREAS, this Revised Order No, 18,703 is issued due to the inability of Public Service Company of New Hampshire to publish the original Order No. 18,703 issued on June 8, 1987; 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 July 24, 1987; and it is

FURTHER ORDERED, that the petitioner effect said notification by publication of this order once in a newspaper of general circulation in the area in question, such publication to be no later than July 16, 1987 and documented by affidavit to be filed with this office within 10 days of the

date of this order; and it is

FURTHER ORDERED, NISI that the petitioner be authorized, pursuant to RSA 371:17 et seq. to construct, operate and maintain the petitioned electric lines across the public waters of Pequawket Pond and the Saco River, both in Conway, New Hampshire; and it is

FURTHER ORDERED, that such authority shall be effective July 27, 1987, 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 tenth day of July, 1987.

==========

NH.PUC*07/10/87*[60248]*72 NH PUC 221*Reynolds Drake

[Go to End of 60248]

72 NH PUC 221

Re Reynolds Drake

DE 87-98
Order No. 18,706

New Hampshire Public Utilities Commission

July 10, 1987

ORDER nisi granting authorization to a developer to improve storm drainage facilities.

CERTIFICATES, § 76 — Grant of license — Storm drainage facilities — Factors affecting authorization.

[N.H.] A developer was granted a license to construct, use, maintain, repair and reconstruct storm drainage facilities necessary in the development of housing north of the affected area because of the following: (1) the appropriate state agencies had approved the plans; (2) the construction would improve the flow of waters currently traversing the affected areas, reducing chances of further erosion of the rail bed; and (3) the improvement was determined to be in the public good.

By the COMMISSION:

ORDER

WHEREAS, on May 20, 1987, Steven J. Smith Associates, Inc. filed with this Commission on behalf of its client, Reynolds Drake (petitioner), a petition seeking license to construct, use, maintain, repair and reconstruct storm drainage facilities along Grey Rocks Road in Belmont, New Hampshire, on property owned by the State of New Hampshire, said drainage needed in the development of housing to the North of the affected area; and

WHEREAS, the petitioner has coordinated its planning for said drainage facilities with the Railroad Division of the Department of Transportation and with the Division of Water Supply and Pollution Control of the Department of Environmental Services and will construct said facilities according to plans approved by those agencies; and

WHEREAS, said construction will improve the flow of waters currently traversing the affected areas, reducing chances of further erosion of the rail bed; and

WHEREAS, such improvement is determined in the public good; and

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

WHEREAS, this Revised Order No, 18,706 is issued due to the inability of Steven J. Smith Associates, Inc. to publish the original Order No. 18,706 issued on June 11, 1987; 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 July 24, 1987; and it is

FURTHER ORDERED, that the petitioner effect said notification by publication of this order once in a newspaper of general circulation in the area in question no later than July 20, 1987, and documented in affidavit to be made on a copy of this order and filed with this office; and it is

FURTHER ORDERED, NISI that Reynolds Drake be, and hereby is authorized under RSA 371:17 et seq to construct, use, maintain, repair and reconstruct a closed drainage system and regrade west 600 plus feet of ditch line within the Concord-toLincoln Railroad right-of-way at its intersection with Grey Rocks Road, Belmont, New Hampshire at approximate Valuation Station 1168-90 V21/57; and it is

FURTHER ORDERED, that all construction meet the requirements of the Division of Water Supply and Pollution Control and the Railroad Division and as depicted on Drawing 86-177 on file with this Commission; and it is

FURTHER ORDERED, that such authority be effective 20 days from the date of this order, unless a hearing is requested as provided herein or the Commission directs prior to the effective date.

By order of the Public Utilities

Commission of New Hampshire this tenth day of July, 1987.

==========

NH.PUC*07/10/87*[60281]*72 NH PUC 289*Mount Crescent Water Company

[Go to End of 60281]

Re Mount Crescent Water Company

DE 87-108
Order No. 18,748

New Hampshire Public Utilities Commission

July 10, 1987

PETITION by water utility for approval of longterm debt issue; granted.

SECURITY ISSUES, § 44 — Factors affecting authorization — Reasonableness — Water main replacement.

[N.H.] A water utility was authorized to issue secured debt in an amount not to exceed $11,500, in order to raise funds for construction of a main replacement, with the issue having a tenyear life and an interest rate of 12%; the issue was approved because the terms and conditions were reasonable and consistent with the public good.

By the COMMISSION:

ORDER

WHEREAS, on June 5, 1987 Mount Crescent Water Company, a duly established public utility authorized to provide water service within the town of Randolph, New Hampshire, filed a petition requesting ap10proval for a long term debt issue of $11,500.00 for forty-two months at twelve percent annual interest; and

WHEREAS, Mount Crescent Water Company states that the proceeds from said debt issue will be utilized in constructing a main replacement, said main having been damaged in December, 1986; and

WHEREAS, on July 1, 1987 Mount Crescent Water Company revised its petition and now requests approval for a long term debt issue of $11,500.00 with a ten year term at twelve percent annual interest; and

WHEREAS, upon investigation of Mount Crescent Water Company's proposed long term debt issue, the Commission finds the terms and conditions of said issue are reasonable and consistent with the public good; it is therefore

ORDERED, that Mount Crescent Water Company be, and hereby is, authorized to issue its secured debt in an amount not to exceed $11,500.00, said issue having a ten year life and an interest rate of twelve percent; and it is

FURTHER ORDERED, that Mount Crescent issue a disposition of proceeds report semi-annually for the months ending June and December until the entire issue has been dispersed.

By order of the Public Utilities Commission of New Hampshire this tenth day of July, 1987.

==========

NH.PUC*07/10/87*[60283]*72 NH PUC 290*Generic Gas Investigation

[Go to End of 60283]

72 NH PUC 290

Re Generic Gas Investigation

DE 86-208
Supplemental Order No. 18,750
New Hampshire Public Utilities Commission
July 10, 1987

ORDER accepting stipulation exempting a propane distributor from marginal cost study filing requirement.

RATES, § 373 — Gas rate design — Marginal cost study — Propane distributor.

[N.H.] A stipulation was entered into by commission staff and a propane distributor, reflecting the conclusion that a propane distribution system is significantly different from a natural gas distribution system, so that a marginal cost study need not be submitted by the propane distributor, because such a study is not necessary for calculation of rates characterized by a single customer class and low capacity-related costs, especially when such a study is costly to perform relative to the number of customers served.

By the COMMISSION:

SUPPLEMENTAL ORDER

WHEREAS, by Order of Notice dated July 14, 1986 the Commission opened an investigation into questions of rate design and the role of marginal cost methodologies for gas companies to assess, inter alia, "whether marginal cost of service studies should be required of all gas companies requesting rate relief"; and

WHEREAS, the parties held consultative discussions on September 12, October 10 and 24, November 21, 1986, January 9, February 6 and 13, March 6 and 27, April 17, May 8 and 22, June 12 and 26, 1987; and

WHEREAS, on January 29, 1987, Petrolane — Southern New Hampshire Gas Company, Inc. (Petrolane) presented a memorandum in opposition to requiring Petrolane to perform a marginal cost study; and

WHEREAS, following discussions, a Stipulation was reached between the Public Utilities Commission Staff (Staff) and Petrolane and submitted to the Commission by Staff on July 8,

1987, which agreed that a marginal cost of service study should not be required of Petrolane when requesting rate relief; and

WHEREAS, the Stipulation reflects the conclusion of the parties that Petrolane's propane distribution system is significantly different from a natural gas distribution system, and a marginal cost study is not necessary when calculating rates for a utility characterized by a single customer class and low capacity related costs and is costly to perform relative to the number of customers served by Petrolane; and

WHEREAS, after review and consideration, it is the Commission's judgment that the Stipulation Agreement is consistent with the public good; it is hereby

ORDERED, that the Stipulation Agreement is accepted and marginal cost of service studies shall not be required of Petrolane so long as the nature of its utility operations or distinctions among customer groups remain unchanged, or until further order of this Commission.

By order of the Public Utilities Commission of New Hampshire this tenth day of July, 1987.

==========

NH.PUC*07/10/87*[60286]*72 NH PUC 293*New England Telephone and Telegraph Company, Inc.

[Go to End of 60286]

72 NH PUC 293

Re New England Telephone and Telegraph Company, Inc.

DR 86-236
Order No. 18,753

New Hampshire Public Utilities Commission

July 10, 1987

ORDER approving provision of new centrex services and a flexible rate payment plan.

---

1. SERVICE, § 463 — Telephone — Nova Centrex Service — Analog switching equipment.

[N.H.] Nova Centrex Service is a facility-based centrex service available from analog central office switching equipment, which is essentially a repricing of custom centrex intended to recover forward-looking capital and operating costs. p. 295.

2. RATES, § 566 — Telephone — Centrex service — Flexible rate payment plan.

[N.H.] The commission approved a system for pricing new offerings of centrex service consisting of a schedule A (upfront payment) rate element intended to recover capital costs, and a schedule B (monthly rate) rate element intended to recover operating costs; the flexible rate payment plan (FRPP) is a payment plan that allows customers the option of spreading payments of the schedule A rate over various time periods up to seven years, and the schedule B rate will continue for as long as the system remains in service. p. 295.

3. SERVICE, § 463 — Telephone — Intellipath SM Digital Centrex Service — Options.

[N.H.] Intellipath SM Digital Centrex Service incorporates more features than Nova Centrex Service (a facility-based centrex service available from analog central office switching equipment) as part of the basic offering and some additional optional features that are not available for Nova service; Intellipath is offered for business customers who desire centrex service from digital central office switching equipment. p. 295.

4. RATES, § 566 — Telephone — Centrex service — Promotion of universal service.

[N.H.] A new pricing system for a telephone utility's centrex offerings covered the costs of service as well as contributed 50% above the costs to the general revenue needs of the utility, and the commission found that this contribution would help to offset the cost of basic services and promote universal service, which would benefit all telephone customers so that the rates were not found excessive or extortionate. p. 296.

5. RATES, § 566 — Telephone — Centrex service — Loop costs — Capital cost recovery — Stranded investment.

[N.H.] A new pricing system for a telephone utility's centrex offerings was found appropriate because the rate for use of the loop was made distance sensitive, which will help the utility to more accurately cover costs, and the utility had also created a "commitment" rate to ensure recovery of capital costs, which addresses the concern that customers will drop off the network and that stranded investment will result. p. 297.

6. RATES, § 566 — Contracts — Change in contract rates — By action of commission — Centrex service.

[N.H.] A telephone utility's customers that have existing contracts for centrex service should be allowed to take service under the new rates, because it was demonstrated that the new rates for essentially the same services are more appropriate than the existing rates, so that it would be discriminatory not to allow customers to change over to the new rates. p. 297.

7. RATES, § 566 — Centrex service — Form and contents — Telephone tariff page — Prohibiting resale.

[N.H.] A telephone utility was required to file a tariff page to be included in the centrex section of the tariff which states that centrex services may not be used to resell the services of the utility unless the reseller is given permission to resell by the commission. p. 297.

APPEARANCES: Phillip M. Huston, Esq. on behalf of New England Telephone

Page 293

Company; Martin C. Rothfelder, Esq. on behalf of the Staff of the New Hampshire Public Utilities Commission.

By the COMMISSION:

REPORT

I. PROCEDURAL HISTORY

On August 15, 1986 New England Telephone and Telegraph Co., Inc. (NET or Company) filed tariffs proposing to introduce Nova Centrex Service (Nova) and Intellipath SM Digital Centrex Service (Intellipath). Dockets DR 86-235 and DR 86-236 respectively were opened to investigate these tariffs. Pursuant to N.H. Admin. Code PUC §203.07 and by Order No. 18,409 (September 12, 1986) in Dockets DR 86-235 and DR 86-236 these Dockets were consolidated into Docket DR 86-236. The proposed tariff pages were suspended and the Commission ordered that a hearing on the merits be held on December 16, 1986. Order No. 18,409.

The Commission defined the 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. Inc., [Special Contract No. 85-1, New England Telephone/Sanders Associates], DR 85-425, Order No. 18,213, 71 NH PUC 234 (1986), and Re New England Teleph. & Teleg. Co. [Special Contract No. 86-1, New England Telephone/State of New Hampshire], DR 86-244, Order No. 18,411, 71 NH PUC 551 (1986), particularly New England Telephone, Special Contract No. 86-1, in which the Company alleged on page one 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?

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 Commissioner's concerns about Centrex cost recovery, as delineated in Re New England Teleph. & Teleg. Co., 69 NH PUC 268 (1984)? Re New England Teleph. & Teleg. Co., DR 86-246, Order No. 18,478, 71 NH PUC 661 (1986).

The prehearing conference scheduled for December 16, 1986 was postponed. The Commission approved the parties' proposed procedural schedule in Order No. 18,590 (Mar. 10, 1987). A hearing on the merits took place on May 26-27, 1987.

At the hearing on the merits, after the bulk of the testimony, Staff agreed to review the computer model used by the Company to determine its costs of service. The purpose of the review was to determine if Staff could withdraw any of its objections as stated in the following position of the Staff.

NET agreed and a proprietary agreement was signed by the parties concerning the computer manual and other materials loaned to the Commission's Staff.

II. PROPOSED SERVICES

[1-2] NOVA is a facility-based Centrex service available from analog central office switching equipment. It is essentially a repricing of Custom Centrex intended to recover forward-looking capital and operating costs. It will recognize the major cost criteria of distance and customer commitment. The rates are, in the terminology of the Company, based on forward-looking, incremental costs. The Schedule A (upfront payment) rate element is intended to recover capital costs and the Schedule B (monthly rate) element is proposed to recover operating costs. NOVA is proposed under the Flexible Rate Payment Plan (FRPP). The FRPP is a payment plan that allows customers the option of spreading payments of the Schedule A rate over various time periods up to seven years. The Schedule B rate will continue for as long as the system remains in-service. The Company has proposed that Schedule B rates be subject to annual adjustments through a tariff filing to reflect changes in the Consumer Price Index. The outside plant rate elements vary by half-mile increments, up to three miles from the central office. Beyond three miles rates and charges are based on costs. Custom Centrex would be grandfathered. Any new requests for service would be under the NOVA and Intellipath tariffs. Growth for grandfathered customers would be allowed where facilities are in place. There is a tariff provision which provides for converting existing Centrex customers to the new services.

[3] Intellipath is offered for business customers who desire Centrex service from digital central office switching equipment. Intellipath incorporates more features than NOVA as part of the basic offering and some additional optional features that are not available from the NOVA service. The rates for Intellipath also utilize the two schedule method of payment and the Flexible Rate Payment Plan as discussed above.

III. POSITIONS OF THE PARTIES

A. New England Telephone

The alleged objectives of the proposed pricing scheme are:

1. to structure a viable and attractive facility-based offering for customers in analog and digital offices,

2. to cover all relevant costs,

3. to minimize the risk of future stranded investments, and

4. to provide price stability and flexibility.

This scheme attempts to emulate the putatively competitive PBX alternatives by structuring rates into "upfront" and monthly payments and by offering features similar to those available with PBX or key systems. The capital cost related rate elements stay constant throughout the contract term. This consistency addresses the objective of rate stability.

The Company avers that the prices for the new services are reasonable since they exceed

costs and are competitive with other vendors. The seven year service contract was chosen to be comparable with the normal service life of a PBX. The central office rate element includes the costs of such equipment as central processing, control and monitoring equipment, and basic software. The loop costs are recovered in the outside plant rate elements. The capital costs include return on investment, depreciation, debt interest and income taxes. The operating costs include maintenance, administration, general service including research and development, and other taxes. Since the full-life incremental costs, as well as related common costs, were identified, it was not appropriate to include items such as

Page 295

executive expenses, which do not increase when Centrex is offered. Outside plant rates exceed costs based on actual New Hampshire experience. In addition to covering its costs, revenues are approximately 50% above the incremental and related common costs. This produces ... "contributions" to support the general revenue needs of the Company.

B. Staff

The Staff argued that NET had not met its burden of proof that the rates for the proposed services or features cover the costs of the services. Since NET did not provide adequate PBX or PBX feature pricing information, NET did not meet its burden of proving that the proposed services are competitively priced. Staff averred that since the prices have not been proven to cover costs that they could result in cross-subsidies and anticompetitive pricing.

Following a review of a cost study manual provided under a proprietary agreement, which indicates that the manual provides a methodology for determining the usage of joint and common equipment used in the provision of the proposed services and other services, Staff has withdrawn its argument that NET had not met its burden of proof that the rates for the proposed services or features cover the costs of the services. Based on this methodology Staff agrees that the Company has proposed rates which cover the cost of the joint and common equipment. The Staff also noted that NOVA is simply a repricing of Custom Centrex service.

Staff asserted that NET did not provide adequate reasons to justify the difference in pricing between the proposed services and normal business lines, specifically, rate groups were not used in NOVA and Intellipath pricing. The difference could lead to discriminatory pricing.

The Staff also questioned whether Centrex could compete with private branch exchange (PBX). It stated that the proposed seven year contract could be anticompetitive. Since the commitment rate can be spread out over different payment periods, a seven year contract is not necessary to insure capital recovery.

The Staff maintained that the tariff language should be amended to include a statement that resale of telephone service is illegal. It declared that an attrition rate should not be included in the rates because NET had not presented any proof of attrition.

IV. COMMISSION ANALYSIS

It appears from facts on the record that the Company has produced adequate evidence to indicate that the loop costs, capital costs, and operating costs have been covered. The Company indicated that it did not identify such items as executive expenses. However, the 50% above the

incremental and common costs (the alleged "contribution" to support the general revenue needs) will undoubtedly be sufficient to cover these miscellaneous overhead costs. We expect the Company to produce a detailed allocation of these costs or expenses in future proceedings, even where the costs or expenses do not increase when a service is offered, since if this use of equipment or services results in efficiencies of economy this may eventually require a rate decrease for other services. In addition, a large amount of growth in the customer base for these "added-on" services may, in the long run, require additional expenses or investments.

In light of the above, and based on a purview of the cost study manual, we find that NET has met its burden of proof and that, using the Company's methodology the proposed rates cover the costs of the proposed services. Given that the Commission is currently investigating NET's costs of service in Docket DR 85-182, the Commission will reserve judgement on whether the methodology used in this case is the most appropriate method for determining NET's cost of service.

[4] Staff argued that NET did not provide adequate PBX or PBX feature pricing

Page 296

information; therefore, NET did not meet its burden of proving that the proposed services are competitively priced. We find that the proposed rates cover the costs of service and add a contribution of 50% above the costs to the general revenue needs of the Company. This contribution will help to offset the cost of basic services and promote universal service. Since universal service will benefit all telephone customers, including Centrex customers, the proposed rates are not excessive or extortionate. Given the above considerations, we find the rates to be just and reasonable.

[5] We agree with Staff that NOVA is simply a repricing of Custom Centrex service. However, the new price is more appropriate than the old price. To wit, the rate for the use of the loop has been made distance sensitive. This will help the Company to more accurately price to cover costs. In addition, the Company has created a "commitment" rate to ensure recovery of capital costs. This will address the concern that customers will drop off the network and that stranded investment will result. Re New England Teleph. & Teleg. Co., 69 NH PUC 268, 272, DR 84-51, Supplemental Order No. 17,053 (1984). It will also address the dissenting Commissioner's concern in Re New England Teleph. & Teleg. Co., DR 85-419, Order No. 18,327, 71 NH PUC 388 (1986) Dissent at 1, that proposed analog services could require investment which will be outmoded before its costs are recovered.

[6] We do not agree with the Company that customers that have existing contracts for Centrex service should be required to take service under those contracts should they desire to take service under the new rates. The Company has shown that the new rates for essentially the same services are more appropriate than the existing rates. Therefore, it would be discriminatory to not allow customers to change over to the new rates should they so desire.

We understand the Staff's concern over the difference in pricing between the proposed services and normal business lines. However since the proposed services appear to be properly priced, we must defer to our decision in Docket DR 85-182 to determine if other services are priced appropriately.

The viability of Centrex services in the competitive market place (assuming that Centrex and PBX are substitutes) is very important to this decision. We are aware of many articles which indicate that Centrex usage is growing steadily — from approximately 7 million station instruments installed in 1983 to almost 8 million in early 1986. Fromm, Frederick R., "Centrex is Not Dead Yet!" Telephony, (April 6, 1987) 40. Writers attribute the recent Centrex successes to the growth of customer features and high powered digital switching combined with extensive Centrex marketing and support. Madrid, J.; Sheldon, S.; Cheadle, G., "Rising from Ashes: Centrex," Telephone Engineering and Management, (March 15, 1987) 49, 56.

Because we recognize the potential for growth in the technology combined with the quality of marketing and support generally provided by NET, we find that provision of Centrex service may provide a benefit to NET and its ratepayers, particularly recognizing the protection provided by the commitment rate and the seven year contract. We will expect full allocations of the costs of marketing and support in any future proceedings.

The proposed seven year contract is appropriate. It will continue to generate revenues related to the maintenance of equipment used in common with basic service. The benefit to other ratepayers in providing an assured revenue stream is important in a more competitive environment. We are not convinced that the proposed seven year contract is anticompetitive because it has not been shown that PBXs and Centrex services are substitutes although they may be partial substitutes.

[7] The tariff language should be amended to include a statement that the resale of telephone service is illegal. While NET elicited testimony that the general regulations section of its tariff stated that "service shall not be used in competition with the

Page 297

business of the Telephone Company" (NHPUC 75, Part A, Section 1, page 3, General Regulations and Definitions), customers can not be expected to be familiar with the general regulations as opposed to the specific applicable tariffs when taking service. This restriction should be apparent from reading the Centrex provisions. In addition, resale could have a negative impact on universal service if it is allowed to occur unchecked by the Commission. Therefore, it is appropriate to require the Company to file a tariff page to be included in the Centrex section of the tariff which states that Centrex services may not be used to resell the services of the telephone company unless the reseller is given permission to resell by the Commission. We expect the Company to work with the Staff to develop appropriate language which will be understandable to customers.

We do not find it appropriate to approve the inclusion of an automatic attrition mechanism since NET has not proven the existence of attrition. Should these, and other services be subject to attrition in the future, the Company should submit new rates based on the change in cost caused by attrition and the proof of attrition which we require of all other utilities. Re Public Service Co. of New Hampshire, 65 NH PUC 251 (1980), Re New England Teleph. & Teleg. Co., 39 NH PUC 284, 291 (1957).

ORDER

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

ORDERED, that the Intellipath and NOVA Centrex Services as conditioned in the foregoing Report be, and hereby are, approved; and it is

FURTHER ORDERED, that the Company shall file tariffs in compliance with the Report for effect within twenty (20) days of the date of this Order.

By order of the Public Utilities Commission of New Hampshire this tenth day of July, 1987.

==========

NH.PUC*07/13/87*[60284]*72 NH PUC 291*Long Bay Corporation

[Go to End of 60284]

72 NH PUC 291

Re Long Bay Corporation

Additional party: City of Laconia

DE 87-116
Order No. 18,751

New Hampshire Public Utilities Commission

July 13, 1987

ORDER nisi granting authority to place and maintain sewer plant beneath state-owned railroad property.

CERTIFICATES, § 76 — Grant of license — Sewer plant — Crossing state-owned land — Public convenience and necessity.

[N.H.] A contractor, on behalf of a municipality, was granted a license to place and maintain sewer plant beneath state-owned railroad property, in order to have access to an interceptor, which was found to be in the best interests of the public without substantially affecting public rights to the land.

By the COMMISSION:

ORDER

WHEREAS, on June 18, 1987, Long Bay Corporation filed a petition seeking license under RSA 371:17 to cross State-owned railroad property for the purpose of connecting to the Paugus Bay Interceptor; and

WHEREAS, such petition was filed on behalf of the City of Laconia; alleged to be the eventual owner of said sewer system upon its completion; and

WHEREAS, the Commission finds such access to the Paugus Bay Interceptor in the best interest of the public without substantially affecting public rights to said land; and

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

ORDERED, that all persons interested in responding to this petition be notified that they may submit their comments or file a written request for a hearing on the matter before the Commission no later than July 20, 1987; and it is

FURTHER ORDERED, that Long Bay Corporation effect such notification by publication of this order once in the Evening Citizen, Laconia, New Hampshire, such publication to be no later than July 15, 1987 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 Long Bay Corporation and the City of Laconia be, and hereby are, authorized under RSA 371:17 et seq to place and maintain sewer plant beneath state-owned railroad property in Laconia, New Hampshire as depicted on PCM drawings 3 and 4 of Project No. 117-87-01 and R. Rhines' Maps Nos. 87-17.1 and 87-17.2; and it is

FURTHER ORDERED, that all construction meet requirements of the Water Supply and Pollution Control Division, Department of Environmental Services as well as the requirements of the Bureau of Railroads, Department of Transportation; and it is

FURTHER ORDERED, that such authority shall be effective seven days from the date of publication of this order, unless a hearing is requested as provided herein of the Commission otherwise directs prior to the effective date.

By order of the Public Utilities Commission this thirteenth day of July, 1987.

==========

NH.PUC*07/13/87*[60285]*72 NH PUC 292*South Down Shores

[Go to End of 60285]

72 NH PUC 292

Re South Down Shores

DE 87-117
Order No. 18,752

New Hampshire Public Utilities Commission

July 13, 1987

ORDER nisi granting authority to place and maintain sewer plant beneath state-owned railroad property.

CERTIFICATES, § 88 — Grant of license — Sewer plant — Crossing state-owned land —

Public convenience and necessity.

[N.H.] A license was granted for the placement and maintenance of sewer plant beneath state-owned railroad property, involving a bath house and a boat master house, including connection to an interceptor, which was found to be in the public interest without substantially affecting public rights to the land.

By the COMMISSION:

ORDER

WHEREAS, on June 18, 1987, South Down Shores filed with this Commission its petition seeking authority under RSA 371:17 to place and maintain sewer plant on Stateowned railroad property in Laconia, New Hampshire; and

WHEREAS, said sewer plant involves a bath house "... just northwest of railroad mile post C31 Sta. 1631 + 96." and a boat master house "... approximately 150' of SMH]2 ..." said sewer lines to be cored into the 4812N Paugus Bay Interceptor which is constructed on the railroad property; and

WHEREAS, connection of said sewer is in the public interest and does not substantially affect public rights on said land; and

WHEREAS, the Commission finds that the public should be given an opportunity to respond in support of, or in opposition thereto; 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 July 20, 1987; and it is

FURTHER ORDERED, that South Down Shores effect such notification by publicaction of this order once in the Evening Citizen, Laconia, New Hampshire, such publication to be no later than July 15, 1987; 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 South Down Shores be, and hereby is, authorized under RSA 371:17 et seq to place and maintain sewer connections to the Paugus Bay Interceptor as depicted in Sheet 1 and 2 of Drawing 83-63 and Drawings of Phase I and Phase II-a & b, Nos. 83-136 on file with this Commission; and it is

FURTHER ORDERED, that all construction meet the requirements of the Water Supply and Pollution Control Division, Department of Environmental Services, and also those requirements of the Bureau of Railroads, Department of Transportation; and it is

FURTHER ORDERED, that such authority shall be effective seven days from the date of publication 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 this 13th day of July, 1987.

==========

NH.PUC*07/13/87*[60287]*72 NH PUC 298*Vicon Recovery Systems, Inc.

[Go to End of 60287]

72 NH PUC 298

Re Vicon Recovery Systems, Inc.

DR 86-130
Order No. 18,754

New Hampshire Public Utilities Commission

July 13, 1987

ORDER declaring a long term small power production rate order null and void.

COGENERATION, § 24 — Rates — Long term rate order — Withdrawal of approval — Project maturity.

[N.H.] Where the commission had approved the long term rate petition of a proposed small power production project based, in part, on the project developer's assurance that the financing arrangements for the project would be finalized by a date certain, and financing was not obtained by that date, the order approving the rate petition was declared null and void; the commission found the failure to finalize financing arrangements demonstrated the project was not sufficiently mature as to be eligible for long term rates.

i. COGENERATION, § 24 — Rates — Long term rate order — Withdrawal of approval — Effect of project delays due to litigation.

[N.H.] Statement, in dissenting opinion, that the majority erred in declaring a long term small power production rate order null and void as a result of the small power producer's failure to finalize financing arrangements; the dissenting commissioner argued that the failure to obtain financing was entirely due to litigation initiated by the interconnecting utility and, that the effect of the majority's decision was, therefore, to allow litigation delays to invalidate a rate order and effectively kill a small power production project. p. 302.

APPEARANCES: Brown, Olson and Wilson by Michael A. Walker, Esq. for Vicon

Page 298

Recovery Systems, Inc.; Thomas B. Getz, Esq. and Sulloway, Hollis and Soden by Margaret H. Nelson, Esq. for Public Service Company of New Hampshire; Michael Holmes, Esq. and Joseph Rogers, Esq. for the Consumer Advocate; Martin C. Rothfelder, Esq. and Dr. Sarah P. Voll for the Commission and Commission Staff.

By the COMMISSION:

REPORT

I. PROCEDURAL HISTORY

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, DE 83-62, 69 NH PUC 352, 61 PUR4th 132 (1984) and DR 85-215, 70 NH PUC 753, 69 PUR4th 365 (1985) (DR 85-215). The Commission Staff issued data requests on May 8, 1986 to which Vicon responded on June 18, 1986. On August 1, 1986 by Order No. 18,356 (71 NH PUC 435) the Commission granted Vicon a 20 year long term rate, conditional upon Vicon providing the Commission with an affidavit attesting to the finalization of its financing, construction permits, and agreements with participating municipalities by January 1, 1987. PSNH filed a Motion for Rehearing on Order No. 18,356 on August 19, 1986 and Vicon replied on September 9, 1986. The Commission reaffirmed its Order on September 24, 1986 by Order No. 18,415 (71 NH PUC 565). PSNH filed a Motion for Rehearing on October 14, 1986 to which Vicon replied with a "Memorandum of Vicon Recovery Systems, Inc. in Opposition to the Motion of [PSNH] for a Rehearing" (Memorandum) on October 21, 1986. On November 12, 1986 by Order No. 18,481 (71 NH PUC 663) the Commission again reaffirmed its decision. On December 12, 1986, PSNH appealed the Commission's Orders to the Supreme Court.

On December 31, 1986, Vicon submitted an affidavit concerning the status of its project that attested that the financing, permits, and agreements had not been finalized, and on February 3, 1987 the Commission ordered Vicon to appear before the Commission on February 18, 1987 to show cause why Order No. 18,356 should not be found null and void. At the request of Vicon the hearing was continued to April 8, 1987. On February 10, 1987 PSNH filed a motion to remand in the Supreme Court, and on February 17, 1987, the Supreme Court remanded the case to the Commission in accordance with RSA 541:14. At the close of the April 8, 1987 hearing Vicon represented that it would file affidavits concerning the position of the City of Manchester as it related to the finalization of financing, construction permits, and agreements with participating municipalities. Vicon filed its affidavits on April 14, 1987 and in response to an April 29, 1987 request by PSNH for an opportunity to cross-examine the Manchester witnesses, the Commission held a second hearing on June 10, 1987. Vicon and PSNH filed briefs on June 26, 1987.

II. POSITION OF THE PARTIES

Vicon argues that it was impossible, despite the good faith efforts of both Vicon and the City of Manchester, to satisfy the conditions regarding finalization of the service agreement and financing specified in Order No. 18,356 because of the uncertainty created by PSNH's opposition to the rate order. The litigation generated such uncertainty in regard to the economics of the project that neither the City nor Vicon was willing to assume the risk of a change in rate. Vicon testifies that all other issues regarding the service contract could have been resolved prior to January 1, 1987 (e.g., financial guarantors, pass through costs, responsibility for changes in environmental law) but absent certainty on the rate issue further negotiations could not result in a finalized agreement. Similarly, Vicon argues

that there was nothing to be gained by executing a service agreement conditioned on the rate being upheld because the facility could not have been financed until the condition was met. None of the parties involved in the financing discussions was willing to go forward and incur the expense to close a financing without knowing what the final rate would be. Vicon argues that the service agreement with Manchester was the only agreement that needed to be finalized prior to January 1st as the project could go forward without commitments from the communities of the Tri-County Solid Waste Management District.

Vicon also states that rate uncertainty did not become an issue until August 19, 1987 when PSNH filed its motion for a hearing on the feasibility of the project and that Vicon's representations in June that financing, service agreements and construction permits could be completed by December 31, 1986 were reasonable projections at the time.

Finally, Vicon contends that its failure to obtain its construction permits before January 1, 1987 was due to delays in the processing by the relevant state and federal agencies, a circumstance that was beyond Vicon's control.

PSNH notes that Vicon had not received its Waste Water Discharge Permit or its Air Resources Permit prior to January 1, 1987 and in neither case claims that the PSNH appeal had affected its ability to obtain these permits. PSNH also notes that the service agreements had not been signed as of January 1, 1987 and that the latest version available was not a finished draft and did not reflect the parties continuing discussion on a number of unresolved issues such as financing, by-passed waste, ash disposal and liability insurance costs. Manchester and Vicon were unwilling to take the risk that PSNH would prevail in its appeal or to negotiate an agreement conditioned on the affirmance of Vicon's rate orders. Further, PSNH states that Vicon had made no significant progress in its negotiations with the Tri-County Cooperative. Finally, PSNH states that the most recent financing option was a proposal by General Electric Credit Corporation (GECC) and its December 30, 1986 letter stresses that the letter is a proposal only, not a commitment.

PSNH therefore argues that Vicon's rate should be rescinded for failure to satisfy the conditions in the Order. It asserts that Vicon should have brought to the Commission's attention earlier any claim that PSNH's appeal would prevent it from finalizing its arrangements by January 1, 1987 and should now be considered to have waived any claim that PSNH's appeal has relieved it of its obligation to comply with the conditions in its Orders. PSNH argues that Vicon knew of the rate related problems that surfaced in the Rutland, Vermont facility by April 1986 (the basis of Manchester and Vicon's unwillingness to sign an agreement until all appeals had been exhausted) and that as a litigant in DR 86-41 must have known of PSNH's position on the allied issues of eligibility for rates under DR 85-215 and project maturity. Despite this knowledge, Vicon maintained as late as its October 21, 1986 Memorandum that the Commission's conditions were reasonable and gave no indication that there would be problems meeting the deadlines.

PSNH also argues that the PSNH appeal was not the basis for Vicon's failure to obtain its permits, complete its financing or resolve details of the agreement like ash disposal, pass through

costs and liability insurance. PSNH asserts that even assuming good faith in the negotiating process, Vicon and Manchester can not guarantee that the issues would have been resolved by January 1, 1987 if there had been no appeal. Finally, PSNH asserts that the Commission should not grant Vicon's request for a four month extension after the appeal is exhausted. It argues that Vicon was unwilling rather than unable to comply with the Commission's conditions by January 1, 1987 and its request for additional time demonstrates that the project was not sufficiently mature at the time of filing to be eligible for rates under DR 85-215.

III. COMMISSION ANALYSIS

Having reviewed the evidence in this docket including our previous Orders and the Memoranda and Motions concerning those Orders, the Commission reaffirms the findings in its previous Orders, finds that Vicon has not satisfied the conditions contained in Order No. 18,356 and therefore finds that the long term rate approved by Order No. 18,356 is null and void.

The primary issue before the Commission in the Vicon docket is the issue of project maturity at the time of Vicon's original filing and therefore its eligibility for rates pursuant to DR 85-215. The financial and technical viability of the project is not at issue, nor its general eligibility for purchase power rates set by this Commission. Further, there is no dispute that Vicon has not met the conditions in its rate order.

Vicon petitioned for a long term rate on April 11, 1986. The Commission Staff is- sued a series of data requests concerning the project on May 8, 1986 and Vicon responded on June 18, 1986. Based on those responses the Commission approved Vicon's petition without hearing on August 1, 1986. The Commission was reassured concerning the technological merits of the project by the selection of the project by the City of Manchester. The issue of project maturity was seemingly satisfied by Vicon's assurances in its data responses that, first,

the City and Vicon are currently negotiating the details of the final services agreement and as indicated in Ex. 3 expect to sign the document in midyear (July 1986). Ex. 3; Vicon response to Data Request 1.

and second, that the latest dates anticipated for significant milestones were as follows:

Construction permits

in hand December 31, 1986 Financing complete/closing December 31, 1986 Project acceptance/commence.Pp ment of operations December 31, 1986 Ex. 3; Vicon Response to Data Requests 11.

The Commission found in its original Order No. 18,356 and re-emphasized subsequently that Vicon would be deemed to have satisfied the Commission's standard of maturity so 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; ..." Order No. 18,415 (71 NH PUC at 566). Thus, compliance with the conditions in the order approving the rate petition was ex post facto proof of maturity at the time of the filing and failure to provide that proof rendered the approving order null and void.

The Commission issued its Orders in the regulatory and legal context that surround all Commission orders and particularly its orders addressing issues of qualified facilities (QFs) in 1986. All Commission Orders are subject to Rehearings and Appeals. RSA 365:21. PSNH exercised its rights to file motions for rehearing and appeals in most of the dockets before the Commission regarding QFs during 1986. In fact, Commission Staff Testimony filed August 25, 1986 in Re Public Service Co. of New Hampshire, Docket No. DR 86-41, a proceeding to which Vicon is a party, stated

Staff will, note here its concern that the Company's actions in recent months do not lead to particular optimism on the finalization of contracts between PSNH and QFs. PSNH has vigorously contested every QF application before the Commission, regardless of technology, size, location or external benefits.

In particular, PSNH motioned for rehearing on the Commission's Order approving a long term rate for the neighboring Concord Regional Waste/Energy project on June 11, 1986 and appealed the Order on September 9, 1986, an appeal that was denied in December 1986.

Within this context, Vicon assured the Commission that it would be able to finalize its permits and financing by December

Page 301

31, 1986 and its agreement with Manchester in July 1986. As late as October 21, 1986, Vicon asserted that Vicon "has more than adequately demonstrated, with the requisite reasonable degree of certainty, that it can fulfill its obligations in development of the Manchester Waste to Energy Project" (Memorandum, p. 4), that "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 with the Commission's discretion" (p. 6, capitalization omitted) and "that the Commission is retaining oversight of this project and will further review that status of the project upon the filing of the called-for affidavit." (p.7). At no time did Vicon suggest that the conditions were unreasonable or that it would be impossible to comply with them given PSNH's opposition.

We do not suggest that Vicon knowingly made incorrect or misleading representations in its data responses as filed in June 1986 concerning the status of its project. The record evidence does indicate, however, that the representations were rendered invalid, not by a change in the regulatory or legal context as asserted by Vicon, but by the reconsideration by the City of Manchester and Vicon of the risks they were willing to accept given the rate uncertainty that characterizes that context. The re-examination that occurred in the summer of 1986 may simply indicate that, at the point of the filing and data requests, the project was too premature for the participants to have fully analyzed their exposure to the risks of the uncertainties concomitant to a Commission rate order.

In any case, that reconsideration has meant that the Vicon project was not as mature as its participants alleged, and the Commission accepted conditional on further proof, at the time of the filing and the investigation. In particular, the end result is that the project no longer meets the Commission's standards for project maturity at the time of a rate filing. Having found that Vicon's rate petition has proved to be premature, we can not grant it additional time to fulfill the

conditions set by the Commission without granting it preferential treatment compared to projects whose developers have resolved the issues of risk sharing in the context of rate uncertainty prior to filing and have then filed timely petitions. Other developers facing the uncertainty of rates have negotiated resolutions entailing conditional agreements and financings. We would expect that Vicon and the City of Manchester, if they continue to pursue the waste to energy option for refuse disposal, would be able to reach similar arrangements. Once those arrangements have been negotiated, Vicon will then be in a position to file a timely petition for a long term rate.

Our Order will issue accordingly.

Dissenting Opinion of Commissioner Aeschliman

[i] I would reaffirm the validity of Vicon's rate order and I would grant Vicon's request to modify the conditions contained in Order No. 18,356 (71 NH PUC 435) to require that Vicon commence construction of the facility within four months after the date on which all litigation, including appeals, concerning the validity of Vicon's long term rate is resolved.

The conditions contained in Order No. 18,356 were designed to ensure that the Vicon project was sufficiently mature to warrant receiving rates pursuant to DR 85-215. The overwhelming weight of the evidence in the record in this case clearly supports a finding that absent PSNH's litigation concerning the validity of Vicon's long term rate it is a virtual certainty that Vicon could have substantially fulfilled the requirements of Order No. 18,356. The effect of the majority's decision is to allow litigation delays to invalidate a rate order and to effectively kill the project.

Not only is this an unfortunate result in this case, where the City and Vicon have spent a great deal of time, effort and money since 1984 in developing this project

as a long term solution to the City's solid waste problems, but I am concerned that it will have a further chilling effect upon the development of alternate energy sources at a time when sharply declining avoided costs make fewer projects economically viable. Given the uncertainty about PSNH's power supply this is not a desirable result.

ORDER

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

ORDERED, that Vicon Recovery Systems, Inc. is found to have failed to show cause why, having not complied with the conditions in Order No. 18,356, its long term rate should not be rescinded; and it is

FURTHER ORDERED, that the findings in Order Nos. 18,356 (71 NH PUC 435), 18,415 (71 NH PUC 565) and 18,481 (71 NH PUC 663) are re-affirmed and that the long term rate granted Vicon in Order No. 18,356 is null and void.

By order of the Public Utilities Commission of New Hampshire this thirteenth day of July, 1987.

==========

[Go to End of 60288]

72 NH PUC 303

Re Claremont Gas Light Company

Additional petitioner: Synergy Gas Corporation

DE 86-239
Second Supplemental Order No. 18,755

New Hampshire Public Utilities Commission

July 13, 1987

ORDER approving the transfer of a gas utility franchise.

FRANCHISES, § 51 — Transfer or assignment — Commission authorization — Factors considered — Gas distribution franchise.

[N.H.] A gas utility was permitted to transfer its franchise to a newly-formed public utility corporation, which was a sister corporation to a financially sound company with experience in the gas distribution business; in approving the transfer the commission considered that, (1) the franchise holder's petition for discontinuance of its franchise was unopposed, and (2) the newlyformed public utility corporation was ready and able to fulfill the established need for service in the franchise area, thereby meeting the criteria for authorization to operate as a public utility.

APPEARANCES: Dom S. D'Ambruoso, Esquire of Ransmeier & Spellman for the Petitioners; Martin C. Rothfelder, Esquire for the Commission and staff.

By the COMMISSION:

REPORT

On August 22, 1986, Claremont Gas Light Company (Claremont) filed a petition for approval to transfer its gas utility franchise to Synergy Gas Corporation (Synergy) (Collectively the "Petitioners"). On September 16, 1986, the Commission issued Order No. 18,399 requiring that the petition be a joint petition between the transferor and transferee. Claremont and Synergy filed said joint petition on September 17, 1986 requesting Commission approval to transfer Claremont's gas utility franchise to Synergy.

The petitioners filed data supporting the petition on October 3, 1986. Direct testimony of Herbert Lieberman and John Russell was filed on November 3, 1986, and additional support data on November 11, 1986.

On December 23, 1986, the Commission issued Supplemental Order No. 18,519 ordering

responses to Commission staff data requests. The petitioners filed said responses on December 31, 1986.

On March 16, 1987, the Commission issued an Order of Notice establishing a

procedural schedule. On June 16, 1987, the Commission held a duly noticed public hearing to hear the testimony of the petitioners on the merits of the petition.

POSITION OF THE PETITIONERS

The joint petition filed by Petitions state that Claremont has entered into an agreement with Synergy under which Claremont would transfer all its right, title and interest in and to all aspects of its gas utility franchise in Claremont, New Hampshire to SG Propane of New Hampshire, Inc. (SG Propane). SG Propane is a newly formed New Hampshire public utility corporation which is a sister corporation to Synergy. (T. p. 18).

Claremont seeks to discontinue its operation as a gas public utility in Claremont, New Hampshire upon the Commission approval of SG Propane to commence said operations. The owners of Claremont are in the process of divesting themselves of their gas utility properties in Claremont and elsewhere.

Claremont states that Synergy is a perfect candidate for the acquisition of the utility operation in that Synergy is a financially sound company with experience in the gas distribution business.

Synergy, incorporated in Delaware, maintains its principal offices in Farmingdale, New York. The Synergy Group Incorporated is a multi-state marketer of propane gas active since 1969 and current in an expansion mode acquiring gas utility properties throughout the nation. Synergy markets propane gas for residential, commercial and industrial uses and operates through 101 branches, each of which is supervised by a branch manager. Synergy uses railroad tank cars and its own fleet of transport trucks to transport propane from refineries, natural gas processing plants or pipeline terminals to the company's extensive bulk storage plants. Synergy uses common carriers only on occasion (Exhibit 3).

Synergy is requesting that this Commission authorize SG Propane to commence operations as a gas public utility in the State of New Hampshire in Claremont's gas utility franchise territory. Mr. Russell of Synergy testified that SG Propane will enter into an affiliate agreement with Synergy pursuant to the provisions of RSA 366 under which Synergy will provide SG Propane with administrative services such as data processing, billing, accounting, legal and transportation services. (Exhibit 2; T. p. 34). Mr. Russell testified that upon the approval of the transfer by the Commission, Synergy and SG Propane will file such an affiliate agreement for the Commission's approval. (T. p. 19). The affiliate agreement will make Synergy's considerable resources and expertise available to SG Propane for its New Hampshire operation.

COMMISSION ANALYSIS

The Petitioners request that the Commission provide approval, pursuant to inter alia RSA 374:22, 28 and 30, of: 1) discontinuance of Claremont's operation as a utility in its Claremont,

New Hampshire franchise area; 2) transfer of Claremont's franchise works and system to Synergy; and 3) SG Propane's status as a public utility and authorization to operate as such within Claremont's current franchise area. The Commission will address each of these requests individually.

AUTHORIZATION TO OPERATE AS A GAS PUBLIC UTILITY IN NEW HAMPSHIRE.

New Hampshire Revised Statutes Annotated, 1984 (RSA) 362:2 define a public utility as:

... every corporation, company, association, joint stock association, partnership and person, their lesees, trustees or receivers appointed by any court, ... owning, operating any pipeline, including pumping stations, storage depots and other facilities for the transportation, distribution, or sale of gas ...

Clearly Claremont's current gas operations, which SG Propane proposes to obtain, is a utility. To allow the transfer of the Claremont franchise, this Commission must evaluate SG Propane's ability to operate as a public utility and its ability to render utility service.

The Commission has established precedent in determining public utility status. In Report and Order No. 17,690 (DF 84-339), Re New Hampshire Yankee Electric Corp., 70 NH PUC 563 (1985) the Commission reviewed RSA 374:26 to determine its ability to grant public utility status to New Hampshire Yankee Electric Corporation. The Commission found the most vital requirement of that statute was to make a determination of public good. To establish this the Commission established a two pronged criteria "1) a need for the service, and 2) the ability of the applicant to provide service." (70 NH PUC at 566).

The Commission believes SG Propane produced evidence during the instant docket's proceedings which clearly meet the two prong criteria.

Claremont has requested the discontinuance of service in its established franchise area. SG Propane is ready to fulfill the established need for service in said franchise area. Testimony and exhibits provided by the Petitioners describe Synergy and SG Propane's ability to operate and provide gas service in the area.

Synergy (SG Propane's sister company) has numerous propane related operations and had been in business for over fifty-five years (Exhibit 5). Synergy's experience with other propane operations satisfies the second criteria. Synergy has operated at least one other large propane pipeline distribution company as well as numerous bottle propane distribution companies throughout the United States. This expertise provides support for our finding that SG Propane be granted authority to operate as a gas public utility in Claremont's presently established franchise area.

AUTHORIZATION FOR CLAREMONT TO DISCONTINUE ITS OPERATION OF THE GAS UTILITY FRANCHISE IN CLAREMONT, NEW HAMPSHIRE.

Pursuant to RSA 374:28 Claremont has petitioned the discontinuance of its franchise. This unopposed petition is supported by SG Propane, who is actively pursuing said franchise area.

Based on the evidence provided during the hearings, and Claremont's history as a public

utility (See DR 82-197), the Commission will authorize Claremont's requested discontinuance.

TRANSFER OF CLAREMONT'S FRANCHISE AND UTILITY OPERATIONS TO SG PROPANE (SYNERGY).

The final section of the Joint Petition asks that the Commission approve the transfer of Claremont's discontinued franchise area to SG Propane. This will permit SG Propane to operate as a gas public utility and provide service to customers in said franchise territory.

In Report and Order No. 15,755 (DSF 82-30), the Commission set forth four guidelines for authorizing a franchise to operate as a public utility in the State of New Hampshire. This guideline consists of a determination of:

(1) The professional and management expertise of the applicant;

(2) The financial capability of the applicant;

(3) The existence of a willing seller ... ;

(4) The existence of willing buyers.

(Re International Generation & Transmission Co., Inc., 67 NH PUC 478, 479 [1982]).

In this docket the Commission finds Synergy meets the criteria set forth in the first two sections. The third and fourth sections refer to service within a franchise area. In a new franchise area the Commission would require that a provider of the utility

commodity to be sold is available and that the area has sufficient customers to support the utility investment at reasonable rates. The present case involves an old franchise area with existing customers. The Commission finds that Synergy has sufficient capacity to obtain gas and with its affiliation with SG Propane is better equipped to obtain gas than Claremont Gas. The customer base should stay relatively stable.

The Commission finds the petition by SG Propane for a franchise to operate a gas public utility in the town of Claremont, New Hampshire is in the public good and accordingly approves said franchise.

CONCLUSION.

Based on the foregoing and the evidence in the record the Commission approves the Joint Petition by Claremont and Synergy.

Our order will issue accordingly.

SUPPLEMENTAL ORDER

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

Ordered, that the Commission finds that it would be for the public good for SG Propane of New Hampshire, a sister corporation of Synergy Gas Corporation, to have authority to do business as a public utility within the City of Claremont, New Hampshire; and it is

Further Ordered, that Claremont Gas Light Company's franchise to operate as a gas public utility within the Town of Claremont be, and hereby is, discontinued pursuant to RSA 374:28;

and it is

Further Ordered, that SG Propane of New Hampshire, a sister corporation of Synergy Gas Corporation, be authorized the franchise to operate a gas public utility within the City of Claremont, New Hampshire; and it is

Further Ordered, that SG Propane of New Hampshire is directed to meet with the Finance Director and the Chief Engineer of the New Hampshire Public Utilities Commission todevelop the proper reporting procedures and accounting requirements required by the NHPUC Rules and Regulations and the Laws of New Hampshire.

By order of the Public Utilities Commission of New Hampshire this thirteenth day of July, 1987.

==========

NH.PUC*07/13/87*[60289]*72 NH PUC 306*Generic Gas Investigation

[Go to End of 60289]

72 NH PUC 306

Re Generic Gas Investigation

DE 86-208
Supplemental Order No. 18,756

New Hampshire Public Utilities Commission

July 13, 1987

ORDER accepting stipulation exempting gas utility from requirement of filing a marginal cost-ofservice study.

RATES, § 373 — Gas rate design — Marginal cost-of-service study — Reasons for exemption.

[N.H.] A stipulation was accepted, exempting a gas utility from the requirement of filing a marginal cost-of-service study when requesting rate relief, because the utility had a relatively static distribution system and stable customer base and level of demand, resulting in the conclusion that a marginal cost study including reconciliation would not add significant information to that obtained from a fully allocated embedded cost study, and would be costly to perform relative to the number of customers served by the utility.

By the COMMISSION:

SUPPLEMENTAL ORDER

WHEREAS, by Order of Notice dated July 14, 1986 the Commission opened an investigation into questions of rate design and the role of marginal cost methodologies for gas

companies to assess, inter alia,

"whether marginal cost of service studies should be required of all gas companies requesting rate relief"; and

WHEREAS, the parties held consultative discussions on September 12, October 10 and 24, November 21, 1986, January 9, February 6 and 13, March 6 and 27, April 17, May 8 and 22, June 12 and 26, 1987; and

WHEREAS, on February 27, 1987 Keene Gas Corporation (Keene) presented a memorandum in opposition to requiring Keene to perform a marginal cost study; and

WHEREAS, following discussions, a Stipulation was reached between the Public Utilities Commission Staff (Staff) and Keene and submitted to the Commission by Staff on July 8, 1987, which agreed that a marginal cost of service study should not be required of Keene when requesting rate relief; and

WHEREAS, the Stipulation reflects the conclusion of the parties that given Keene's relatively static distribution system and stable customer base and level of demand, a marginal cost study including reconciliation would not add significant information to that obtained from a fully allocated embedded cost study, and is costly to perform relative to the number of customers served by Keene; and

WHEREAS, after review and consideration, it is the Commission's judgment that the Stipulation Agreement is consistent with the public good; it is hereby

ORDERED, that the Stipulation Agreement is accepted and marginal cost of service studies shall not be required of Keene so long as its customer base and distribution system remain static, or until further order of this Commission.

By order of the Public Utilities Commission of New Hampshire this thirteenth day of July, 1987.

==========

NH.PUC*07/13/87*[60290]*72 NH PUC 307*Public Service Company of New Hampshire

[Go to End of 60290]

72 NH PUC 307

Re Public Service Company of New Hampshire

DE 87-109
Order No. 18,757

New Hampshire Public Utilities Commission

July 13, 1987

ORDER nisi granting license to construct, operate and maintain aerial transmission lines.

ELECTRICITY, § 7 — Authorization for transmission lines — Aerial lines — Over water.

[N.H.] An electric utility was granted a license to construct, operate and maintain two aerial electric transmission lines over public waters, because aerial plant was less costly both in construction and maintenance than underground and submarine crossings, and the crossings were found to be in the public good.

By the COMMISSION:

ORDER

WHEREAS, on June 15, 1987, the Public Service Company of New Hampshire (PSNH) filed with this Commission its petition under RSA 371:17 seeking license to cross public waters of the Pemigewasset River in the Town of Woodstock, New Hampshire; and

WHEREAS, such crossing comprises two aerial electric transmission lines, essential in serving the needs of the public; one being an existing 115kV, the other a new 34.5kV; and

WHEREAS, PSNH avers that its investigation of this crossing of the Pemigewasset River in Woodstock revealed aerial plant was less costly both in construction and maintenance than underground/submarine crossings; and

WHEREAS, the Commission finds preliminarily that such crossings appear to be in the public good; but feels the public must

Page 307

be given an opportunity to respond in support of, or in opposition thereto; it is

ORDERED, that all persons desiring to respond to this PSNH petition be notified that they may submit their comments in writing or file a written request for public hearing before this Commission no later than July 27, 1987; and it is

FURTHER ORDERED, that such notice be given via one-time publication in a newspaper having wide circulation in the affected area, such publication to be no later than July 20, 1987; and documented by affidavit to be made on a copy of this order and filed with the Commission; and it is

FURTHER ORDERED NISI that PSNH be, and hereby is, granted license under RSA 371:17 et seq to construct, operate and maintain a 34.5kV transmission line and operate and maintain a 115kV transmission line identified in maps and drawings (764-341 and 7649-342) on file with this Commission; and it is

FURTHER ORDERED, that all construction shall meet the requirements of the National Electrical Safety Code; and it is

FURTHER ORDERED, that said authority shall become effective 20 days from the date of this order unless a hearing is requested as provided herein or the Commission otherwise directs

prior to that date.

By order of the Public Utilities Commission of New Hampshire this thirteenth day of July, 1987.

==========

NH.PUC*07/14/87*[60291]*72 NH PUC 308*New Hampshire Electric Cooperative, Inc.

[Go to End of 60291]

72 NH PUC 308

Re New Hampshire Electric Cooperative, Inc.

DE 87-121
Order No. 18,759

New Hampshire Public Utilities Commission

July 14, 1987

ORDER nisi authorizing an electric utility to place and maintain submarine electric cable beneath public waters.

ELECTRICITY, § 6 — Wires and cables — Cable crossing beneath public waters — Authorization — Electric cooperative.

[N.H.] An electric cooperative was authorized to place and maintain electric cable beneath public waters; the commission found that the crossing was necessary for the cooperative to meet its obligation to serve customers within its franchise area and the cooperative had obtained all the necessary easements and permits.

By the COMMISSION:

ORDER

WHEREAS, on June 23, 1987, the New Hampshire Electric Cooperative, Inc. (NHEC) filed with this Commission its petition seeking license to cross public waters of Lake Winnipesaukee in Moultonborough, New Hampshire; said crossing to provide electric service to four customers situated on Whaleback Point; and

WHEREAS, the Cooperative has obtained easements from all parties involved in the construction of said line; and

WHEREAS, Permit No. N-993, dated May 5, 1987, has been issued by the Wet- lands Board, Department of Environmental Services, for the submarine crossing; and

WHEREAS, the Commission finds such crossing necessary for the Cooperative to meet its obligation to serve customers within

its franchise area, thus it is in the public interest; and

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

ORDERED, that all persons interested in responding to this petition be notified that they may submit their comments or file a written request for a hearing on the matter before this Commission no later than July 29, 1987; and it is

FURTHER ORDERED, that NHEC effect such notification by publication of this order once in the Evening Citizen, Laconia, New Hampshire, no later than July 22, 1987 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 be, and hereby is, authorized pursuant to RSA 371:17 et seq to place and maintain submarine electric cable beneath Lake Winnipesaukee as well as associated aerial plant as depicted in NHEC Staking Sheets for Work Order No. 522640 and other documentation on file with this Commission; and it is

FURTHER ORDERED, that all construction meet requirements of the National Electrical Safety Code as well as requirements of the Wetlands Board, Department of Environmental Services; and it is

FURTHER ORDERED, that such authority shall be effective 20 days from the date of this order, unless a hearing is requested as provided herein or the Commission so directs prior to the effective date.

By order of the Public Utilities Commission this fourteenth day of July, 1987.

==========

NH.PUC*07/14/87*[60292]*72 NH PUC 309*Southern New Hampshire Water Company, Inc.

[Go to End of 60292]

72 NH PUC 309

Re Southern New Hampshire Water Company, Inc.

DE 86-230
Supplemental Order No. 18,760

New Hampshire Public Utilities Commission

July 14, 1987

ORDER ruling on a petition to provide water service to previously unfranchised areas.

---

1. SERVICE, § 210 — Extensions by particular utilities — Water — Service to previously

unfranchised area.

[N.H.] A water utility was authorized to provide service to a portion of a previously unfranchised area where no party disputed the extension of service and the utility provided evidentiary material in support of its ability to effectively serve th

e area, as required by state statute RSA 374:22. p. 310.

2. SERVICE, § 210 — Extensions by particular utilities — Water — Service to previously unfranchised area.

[N.H.] A water utility was permitted to conditionally withdraw its petition to serve a portion of a previously unfranchised area located close to the mains of another water utility; nevertheless, if the latter utility fails to file a satisfactory petition to serve the area, the franchise will be assigned to the former utility. p. 311.

3. SERVICE, § 210 — Extensions by particular utilities — Water — Service to previously unfranchised area.

[N.H.] The commission declined to rule on a water utility's petition to serve a portion of a previously unfranchised area where the area was the subject of a competing petition in another docket; a final ruling on the assignment of the franchise was deferred until the completion of the investigation in the competing docket. p. 311.

4. SERVICE, § 210 — Service to newly franchised area — Water — Wholesale supply contract.

Page 309

[N.H.] The commission declined to rule on a water utility's proposal to enter a wholesale contract for a water supply to serve its newly franchised area pending the resolution of contract and planning issues. p. 312.

i. SERVICE, § 210 — Extensions by particular utilities — Water — Service to previously unfranchised area — Statutory requirements.

[N.H.] Statement, in dissenting opinion, that the failure of a water utility to meet the requirements of the Water Supply and Pollution Control Division of the Department of Environmental Services rendered the grant of a franchise to the utility premature and in contravention of the requirements of state statute RSA 387:22. p. 312.

By the COMMISSION:

Supplemental Report

Procedural History

On May 29, 1987 the Commission issued Order No. 18,691 (72 NH PUC 203) denying the petition of Southern New Hampshire Water Company, Inc. (Southern) to serve all unfranchised areas of Londonderry. However, the company was given conditional authorization to serve the area referred to in Order 18,691 as "undisputed" if, within 45 days of the order, they file

sufficient evidentiary materials to show compliance with RSA 374:22 III (1986 Supp.). The order also fixed an additional hearing date on June 8, 1987 for the following purposes:

(1) To hear further arguments related to franchising of the disputed portion of the area petitioned for, and

(2) To further discuss the terms and conditions set forth in the memorandum of understanding between Manchester Water Works and Southern

The hearing was held as scheduled with appearances as follows: Dom S. D'Ambruoso on behalf of Southern New Hampshire Water Company, Inc.; Anthony F. Simon on behalf of Manchester Water Works; Robert H. Fryer on behalf of Home Plate Corporation, Mr. Caparco and Spring Hill Woods Corporation; Jack Webster, Selectman of the Town of Londonderry and Martin C. Rothfelder on behalf of the Commission Staff.

Although not a party to this proceeding, Spring Hill Woods Corporation has petitioned this Commission for authority to serve a portion of the disputed area as a public water utility (docket DE 87-010). Home Plate Corporation and Mr. Caparco are the developers of the homes to served by the proposed Spring Hill Woods corporation system. At the hearing, administrative notice was taken of Docket DE 87-010.

In the hearing Southern filed exhibits 12 thru 14 in response to the requirement for evidentiary materials to show compliance with RSA 374:22 III (1986 Supp.). Exhibits 15 and 16 were filed to document the economic analysis performed by Southern to evaluate water supply alternatives.

Commission Analysis

A. Franchise of the Undisputed Areas.

[1] In Report and Order 18,691 this Commission ordered that Southern New Hampshire Water Company, Inc. shall be authorized to serve the areas referred to in the foregoing report as the undisputed areas upon the filing of sufficient evidentiary materials to show compliance with RSA 374:22 III (1986 Supp.). The undisputed areas include all areas described in the original petition and shown on maps on file in the Commission offices except for areas described below.

The disputed area consists of land bounded on the north and west by existing MWW service area, on the south by Stonehedge Road and on the east by Route 28. The disputed areas also includes land bounded on the north by Stonehedge Road,

by MWW service territory and by Route 28; on the east by the Londonderry town line; on the south by the existing Southern franchise territory and on the west by highway I-93.

RSA 374:22 III (1986 Supp.) states that a petition must satisfy certain requirements concerning the suitability and availability of water for the proposed water utility. Southern filed letters from the Water Resources Division, Department of Environmental Services and Water Supply and Pollution Control Division, Department of Environmental Services to show compliance with these requirements.

In a letter dated June 5, 1987 signed by Delbert F. Downing, Director, the Water Resources

Division stated "... this informal approval will satisfy the requirements of RSA 374:22 relative to this Division". In a letter dated June 8, 1987 signed by Bernard D. Lucey, Administrator Water Supply Engineering Bureau, Water Supply and Pollution Control Division stated "... assuming the successful resolution of a wholesale water contract with the Manchester Water Works, construction of your own water treatment plant or obtaining other high quality supply(ies) elsewhere, we believe that you will have suitable and available water supplies to serve this area effectively as required by RSA 374:22".

Based on these two letters we find that Southern has filed sufficient evidentiary materials to show compliance with RSA 374:22 III (1986 Supp.). We will therefore authorize Southern to serve the undisputed area in accordance with their currently approved tariff for Southern service in Londonderry. The Commission assumes that the company will provide service here and elsewhere based on a least cost planning approach.

B. Franchise of the Disputed Areas

[2, 3] The disputed areas have been described above but must be further defined for clarity. All of the disputed areas were within the original Southern petition. However, the only portion requesting immediate service was the new homes being devel10oped by Home Plate Corporation. In January, 1987 Spring Wood Hills Water Company filed a petition to serve this development, and was docketed as case DE 87-010. The development will be considered separately due to the existence of conflicting petitions in separate dockets. The area is defined in petitioner's exhibit]1 in Docket DE 87-010 and is generally located on the east side of highway I-93 within part of the disputed area. In order to allow the parties in that docket to exercise their due process rights no ruling will be made in this docket or DE 87-010 on the Home Plate Development area until after completion of hearings scheduled in docket DE 87-010 for August 13, 1987.

With respect to the balance of the disputed area, Southern has stated that they wish to conditionally withdraw their petition to serve these areas (Testimony of James O'Brien, June 8, 1987 transcript page 23 and page 49). Withdrawal of the petition is conditioned on Manchester Water Works providing service to the area.

Due to the close proximity of MWW mains to these disputed areas, the Commission finds that service by MWW would be in the public good. However, at this time no petition has been received from MWW asking to serve these areas. Therefore we will accept the conditional withdrawal of the Southern petition subject to receipt of a satisfactory franchise petition from Manchester Water Works within 20 days of the date of this order. A satisfactory petition must include a plan for how MWW will provide service to the subject areas.

In the event that no satisfactory petition is timely filed, we will assign the disputed franchise area (exclusive of the Home Plate Development) to Southern New Hampshire Water Company. No decision will be made at this time relative to the Home Plate Development. However, it is expected that the finally assigned franchisee of the disputed area will be willing to serve the Development, if our investigation in docket DE 87-10 indicates that this would best serve the interest of the public.

C. Wholesale Contract For MWW Water Supply

[4] Southern New Hampshire Water Company and Manchester Water Works have informed the Commission of negotiations which would allow Southern to receive water under a wholesale contract to serve portions of the newly franchised area. The Commission is encouraged by these negotiations but is unable to take a final position until a complete wholesale contract is prepared and submitted for approval. During the hearings a number of issues relative to this contract were discussed. These issues, which are described below, must be resolved before the contract will be approved.

The major issue relates to handling of the Merrimack Source Development Charge. The Commission is concerned over the possibility that customers in the newly franchised area would pay the full SDC but would only receive service under the wholesale contract for 10 years (or less). Similarly there is concern over which customers will pay the charge and the time phasing of SDC charges (all up front or as new customers are added to the system). An equitable arrangement for application of the SDC to a limited term contract should be included in the wholesale contract.

The record is also not clear regarding the relationship of the proposed wholesale contract to Southern's overall least cost planning for new water sources. Southern entered exhibits 15 and 16 into the record to document the status of these planning studies. However, they represent neither a complete nor a final plan. It is unclear whether the proposed wholesale contract will serve only customers in the newly franchised area or whether it would serve new customers in the existing franchise area. The impact on water rates for various customer classes and customers in geographically different locations is not described. The role of additional water supply from Derry is also not covered in the two exhibits. Finally the relationship of the future Southern, Merrimack River source to the wholesale contract is unclear. For example, it is not clear whether they will both be needed or whether they are instead exclusive alternatives.

Pending resolution of these contract and planning issues the Commission can not reach a conclusion relative to the wholesale water supply. We consider these issues to be outside of the scope of this docket and will consider them in our separate review of the wholesale contract. Pending finalization of that contract, Southern is expected to serve the newly franchised area from existing or approved new sources.

Summary

Based on the foregoing analysis we find the following:

A — The petition of Southern New Hampshire Water Company to serve the undisputed area of Londonderry is granted.

B — Conditional withdrawal of the Southern petition relative to the disputed area is granted. However, if Manchester Water Works fails to petition for the disputed area (exclusive of the Homeplate Development) within 20 days, these areas will also be assigned to Southern.

C — No final decision on the wholesale supply of water from Manchester Water Works to Southern is necessary at this time pending formal filing of a contract.

Our order will issue accordingly.

Dissenting Opinion of Commissioner Aeschliman

[i] Based upon the evidence in the record I am unable to find that Southern New Hampshire Water Company has met the requirements of the Water Supply and Pollution Control Division of the Department of Environmental Services. RSA 374:22 III (1986 Supp.) specifically requires that all requirements of these agencies be met before a franchise is granted.

Page 312

The June 8, 1987 letter from Bernard D. Lucey, Administrator Water Supply Engineering Bureau, Water Supply and Pollution Control Division stated "... assuming the successful resolution of a wholesale water contract with the Manchester Water Works, construction of your own water treatment plant or obtaining other high quality supply(ies) elsewhere, we believe that you will have suitable and available water supplies to serve this area effectively as required by RSA 378:22". This letter indicates a belief that Southern will be able to obtain suitable water supplies but it clearly indicates that the requirements of RSA 378:22 have not been met at this time. Under the circumstances it is premature for the Commission to grant a franchise to Southern New Hampshire Water Company in accordance with RSA 374:22 III (1986 Supp).

SUPPLEMENTAL ORDER

Upon consideration of the foregoing Report, which is incorporated herein by reference, the Commission

ORDERS, that Southern New Hampshire Water Company, Inc. shall be authorized to serve the undisputed portion of the previously unfranchised areas of Londonderry as shown on maps on file at the Commission and generally comprising areas South of Stonehedge Road and the Manchester Water Works franchise and West of Route I-93; and it is

FURTHER ORDERED, that conditional withdrawal of the Southern New Hampshire Water Company petition to serve the disputed portion of the previously unfranchised areas as shown on maps on file at the Commission and further described in the referenced report is approved; and it is

FURTHER ORDERED, that if no petition to serve the disputed area (exclusive of the Home Plate Development) is filed by Manchester Water Works within 20 days of the date of this order, Southern New Hampshire Water Company will be assigned this franchise area; and it is

FURTHER ORDERED, that Southern New Hampshire Water Company provide water service to all customers within these newly franchised areas in accordance with their presently approved tariff that applies to Londonderry; and it is

FURTHER ORDERED, that upon negotiation of a final contract for wholesale water supply from Manchester Water Works, the contract be filed with this Commission for approval.

By order of the Public Utilities Commission of New Hampshire this fourteenth day of July, 1987.

==========

NH.PUC*07/14/87*[60293]*72 NH PUC 313*Donald R. Boisvert

[Go to End of 60293]

72 NH PUC 313

Re Donald R. Boisvert

Additional parties: Public Service Company of New Hampshire and New England Telephone and Telegraph Company, Inc.

DE 87-107
Order No. 18,761

New Hampshire Public Utilities Commission

July 14, 1987

ORDER nisi authorizing the placement of aerial electric and telephone lines across state-owned railroad property.

---

1. ELECTRICITY, § 6 — Wires and cables — Construction of lines crossing state-owned railroad property.

[N.H.] An electric utility was conditionally authorized to construct and maintain aerial electric lines across state-owned railroad property; the commission found that the crossing would not substantially affect public rights in the land and was necessary for the utility to fulfill its obligation to provide service in its franchised area. p. 314.

2. CERTIFICATES, § 123 — Telephone — Aerial lines — Crossing state-owned railroad property.

[N.H.] A telephone utility was conditionally authorized to construct and maintain aerial telephone lines across state-owned railroad property; the commission found that the crossing would not substantially affect public rights in the land and was necessary for the utility to fulfill its obligation to provide service in its franchised area. p. 314.

By the COMMISSION:

ORDER

[1, 2] WHEREAS, on June 10, 1987, Donald R. Boisvert filed with this Commission on behalf of the Public Service Company of New Hampshire (PSNH) and the New England Telephone & Telegraph Company (NET) a petition seeking license for the construction and maintenance of an electric power line and possibly, telephone service line across State-owned railroad property in Columbia, New Hampshire; and

WHEREAS, such electric and telephone lines are to provide utility service to the property of

Donald R. Boisvert; and

WHEREAS, such license is necessary for said companies to fulfill requirements to provide service in their authorized franchised areas; and

WHEREAS, the Commission finds such crossing will not substantially affect public rights in said land; and

WHEREAS, the Commission also finds that the public should be given 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 July 29, 1987 and it is

FURTHER ORDERED, that Donald R. Boisvert provide said notice by one-time publication of a copy of this order in a newspaper widely distributed in the affected area, such publication to be no later than July 22, 1987 and designated in an affida- vit to be made on a copy of this order and filed with this Commission; and it is

FURTHER ORDERED, NISI, that PSNH and NET be, and hereby are, granted licenses under RSA 371:17 et seq to construct and maintain aerial electric and telephone lines across State-owned railroad property in Columbia, New Hampshire as depicted in drawing on file with this Commission and further identified as being in the vicinity of Railroad Sta. 1932 + 50; and it is

FURTHER ORDERED, that all construction conform to requirements of the National Electrical Safety Code as well as requirements of the Bureau of Railroad, Department of Transportation; and it is

FURTHER ORDERED, that such authority shall be effective 20 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 this fourteenth day of July, 1987.

==========

NH.PUC*07/15/87*[60294]*72 NH PUC 314*Public Service Company of New Hampshire

[Go to End of 60294]

72 NH PUC 314

Re Public Service Company of New Hampshire

Additional party: CE-KSB Pump Company, Inc.

DR 86-305
Order No. 18,767

New Hampshire Public Utilities Commission

July 15, 1987

ORDER approving a special contract for the provision of interruptible electric service.

RATES, § 321 — Electric — Interruptible service — Special contract rates.

[N.H.] A special contract for the provision of

interruptible electric service was approved as in the public interest; however, the utility was directed to re-examine the terms and conditions of the contract should either of the following occur during the term of the contract: (1) Seabrook nuclear generating station go into commercial operation; (2) a major change occur in the level of marginal costs as calculated by the utility.

By the COMMISSION:

ORDER

WHEREAS, Public Service Company of New Hampshire on December 8, 1986 filed Special Contract NHPUC No. 50 with CEKSB Pump Company, Inc. for interruptible electric service at rates other than those fixed by its schedule of general application; and

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

ORDERED, that said contract may become effective as of the date of this order; and it is

FURTHER ORDERED, that in accordance with Article II — Adjustment for Altered Conditions of said contract, PSNH shall re-examine the terms and conditions of the contract should either or both of the following occur during the term of said contract:

1) Seabrook goes into commercial operation,

2) a major change occurs in the level of marginal costs as calculated by PSNH.

The results of such re-examination, whether requiring an adjustment or not, shall be reported to the New Hampshire Public Utilities Commission.

By Order of the Public Utilities Commission of New Hampshire this fifteenth day of July, 1987.

==========

NH.PUC*07/15/87*[60295]*72 NH PUC 315*Epsom Circle Market v. Concord Electric Company

[Go to End of 60295]

Epsom Circle Market
v.
Concord Electric Company

DC 86-281
Order No. 18,768

New Hampshire Public Utilities Commission

July 15, 1987

ORDER dismissing, for lack of subject matter jurisdiction, a case involving a violation of an electric company easement.

PAYMENT, § 6 — Jurisdiction and powers — State commissions — Bill associated with alleged easement violation.

[N.H.] A case involving a bill for electric company services associated with work required as an alleged consequence of a violation of an easement was dismissed for lack of subject matter jurisdiction; the commission held that nonpayment of the bill may not serve as a basis for termination of electric service because the bill was not for tariffed utility service.

APPEARANCES: Bamberger and Pfundstein by JoAnn Samsons Bamberger, Esquire on behalf of Epsom Circle Market; Ransmeier & Spellman by Michael Lenehan, Esquire on behalf of Concord Electric Company.

By the COMMISSION:

REPORT

On October 10, 1986 Donald Rott, owner of the Epsom Circle Market in Epsom, New Hampshire filed a complaint that objected to a bill in the amount of $2,865.44 by Concord Electric Company. A hearing on the merits was held on November 18, 1986 before the Hearing Examiner.

Evidence was produced at the hearing which indicated that the disagreement

Page 315

derived from the use of a Concord Electric Company ("Company") Easement. The Company alleges that the complainant regraded a parking lot, and that the regrading project reduced the vertical clearance for the wires in the Company's easement strip to less than 18 feet. It argued that the regrading work constituted a violation of the easement rights because the regrading was contrary to the purpose of the easement. Concord Electric Company produced construction work orders showing the replacement of the existing poles and other related construction. A bill in the amount of $2,865.44 was rendered to Donald Rott for labor and materials in connection with replacing two poles to ensure adequate clearance over the regraded parking lot to comply with

the National Electrical Safety Code. The cover letter accompanying the bill stated that the wire clearance was reduced by the complainants filling of the existing bank.

There are two theories under which the Commission could have exercised jurisdiction. If the company were in violation of the National Electrical Safety Code the Commission could require compliance. N.H. Admin. Code PUC §306.01. If the Company needed to take the property in question in an eminent domain proceeding, the Commission would have jurisdiction. N.H. Rev. Stat. Ann. §371:1 et seq.

The case at hand did not concern either of the above. The case at hand is a bill for a violation of an easement. This is a question over which the Commission does not have jurisdiction. Actions for establishment and protections of easements have been held by the Supreme Court to be actions for trespass on the case. Smith v. Wiggin, 48 N.H. 105 (1868) and Carleton v. Cate, 56 N.H. 130 (1875). The due and quiet enjoyment of an easement will also be protected by injunction. Hatch v. Hillsgrove, 83 N.H. 91 (1927), Bean v. Coleman, 44 N.H. 539 (1863) and Cataldo v. Grappone, 117 N.H. 1043 (1977).

We do not have authority over this case via our power to condemn by eminent domain. See N.H. Rev. Stat. Ann. §371:1 et seq. The bill in question is not a bill for tariffed utility service. Therefore, nonpayment of the bill may not serve as a basis for termination of service pursuant to N.H. Admin. Code PUC §303.08.

For the reasons discussed above this case is dismissed with prejudice, for lack of subject matter jurisdiction.

ORDER

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

ORDERED, that this case be, and hereby is, dismissed with prejudice for lack of subject matter jurisdiction; and it is

FURTHER ORDERED, that nonpayment of the bill in question may not serve as a basis for termination of service.

By order of the Public Utilities Commission of New Hampshire this fifteenth day of July, 1987.

==========

NH.PUC*07/15/87*[60297]*72 NH PUC 320*New England Telephone and Telegraph Company

[Go to End of 60297]

72 NH PUC 320

Re New England Telephone and Telegraph Company

DR 85-181
Order No. 18,770

New Hampshire Public Utilities Commission

July 15, 1987

ORDER determining the appropriate range for the capital structure of a local exchange telephone carrier.

---

1. RETURN, § 26.1 — Capital structure — Local exchange telephone carrier.

[N.H.] After considering evidence concerning business risk, borrowing margins, industry norms, and regulatory responsibilities, the commission determined that the appropriate range for the capital structure of a local exchange telephone carrier was 40-45% long term debt and 55-60% common equity. p. 322.

2. RETURN, § 26.1 — Capital structure — Business risk — Local exchange telephone carrier.

[N.H.] In determining the appropriate range for the capital structure of a local exchange telephone carrier, the commission found that the increased risks facing the carrier as a result of divestiture were mitigated by the economic vitality of the carrier's service territory and the ability of the corporate parent of the carrier to successfully meet the challenges of a competitive environment. p. 323.

3. RETURN, § 26.1 — Capital structure — Borrowing margin — Local exchange telephone carrier.

[N.H.] In determining the appropriate range for the capital structure of a local exchange telephone carrier, the commission accepted the argument that the carrier must maintain a borrowing reserve sufficient to maintain a double-A credit rating. p. 323.

4. RETURN, § 26.1 — Capital structure — Regulatory exploitation — Local exchange telephone carrier.

Page 320

[N.H.] In determining the appropriate range for the capital structure of a local exchange telephone carrier, the commission found no evidence to conclude that the carrier was attempting to exploit the regulatory process by adjusting its capital structure for the benefit of stockholders. p. 324.

APPEARANCES: Phillip M. Huston Jr., Esq. For the New England Telephone and Telegraph Company; Cecil O. Simpson, Jr., Esq. for the General Services Administration representing the consumer interests of the Department of Defense and other Federal Executive Agencies; Mary C. Hain, Esq. for the Commission Staff.

By the COMMISSION:

REPORT

I. PROCEDURAL HISTORY

Docket DR 85-181 was opened on June 3, 1985 by Order No. 17,639 (70 NH PUC 496) to address issues of capital structure raised by the Department of Defense (DOD) in the New England Telephone and Telegraph Company (NET or Company) rate case, DR 84-95. An Order of Notice was issued on March 10, 1986 setting a prehearing conference on April 30, 1986 and Report and Order No. 18,257 (71 NH PUC 285) was issued on May 14, 1986 approving the proposed procedural schedule and setting hearings on the merits for January 6-9, 1987. On January 9, 1987 Order No. 18,541 was issued adopting a new procedural schedule.

A meeting was held on March 13, 1987 with NET, DOD and Staff in attendance, whereby an attempt was made to arrange a settlement of the issues. No agreement was reached and Order No. 18,604 was issued adopting a new procedural schedule. Hearings were held on June 2 and 3, 1987.

II. POSITIONS OF THE PARTIES

New England Telephone and Telegraph Company

Testimony was filed on behalf of the Company by Mr. David Benson, Division Manager-Finance, Dr. Samuel Hadaway of Financo, Inc. and the University of Texas and Professor Eugene Brigham, Director of the Public Utilities Research Center at the University of Florida.

Although different evidence was examined by each of the Company witnesses, the recommendations converged on a capital structure containing 40-45% long term debentures and 55-60% common equity. The Company witnesses agreed that a capital structure in that range is consistent with a double-A credit quality rating.

In reaching his conclusion, Mr. Benson considered the current level of business risk facing the Company, the increased stringency of credit quality standards, the need to maintain a sufficient borrowing reserve, and a comparison of debt ratios in the electric utility industry.

Dr. Hadaway modeled the relationship between capital structures containing various proportions of debt and the overall weighted average cost of capital. From that and other evidence he concluded that, "... there is little doubt that large or unexpected departures from industry standards result in significant changes in capital costs." Exhibit No. 3, page 4. In addition to experiencing higher capital costs, he argued that lower rated utilities realize higher operations and maintenance costs and charge higher utility rates.

Professor Brigham argued that the capital structure of NET can be expected to affect future revenue requirements through its effect on the overall cost of capital, through its effect on business operations, and through its potential to impair the Company's ability to raise funds in the future. For these reasons, Professor Brigham argued that "... a primary consideration of capital structure decisions should be to insure that financial constraints do not hinder efficient operations." Exhibit No. 1, page 49. Professor Brigham also presented

results from a model whose design facilitated the study of the joint effects of operating conditions and capital structure on NET's revenue requirements.

Department of Defense and other Federal Executive Agencies

Mr. Winter presented a wide variety of evidence designed to prove that the interest of ratepayers was best served by a capital structure containing 50% debt and 50% equity including 5-10% preferred stock. His recommended capital structure, he argued, is consistent with a first mortgage bond rating of triple-B+ to A-.

Mr. Winter testified that all of the former Bell operating companies including NYNEX have too much equity in their capital structures given their business risk, and that those companies were seeking to exploit the regulatory process to the detriment of ratepayers.1(77) Additional evidence was presented in support of the contention that the capital structure of NET includes too much common equity:

1) The decision by New York Public Service Commission in case]27679 was cited as evidence that common equity ratios of 40-45% have been found reasonable in other jurisdictions.

2) A comparison of the bond yields of NET and two other former BOC's were exhibited to show the cost inefficiency of maintaining a capital structure containing too much common equity.

3) Results from a regression analysis were used to show that changes of debt ratios within the investment grade range had little effect on the cost of debt.

Mr. Winter also argued that the use of 5-10% preferred equity in the capital structure of NET would further reduce the overall cost of capital. He presented a comparison of bond and preferred equity yields to support the proposition that some preferred equity in the capital structure was cost efficient. His model results indicated that replacing common equity with debt and preferred equity would significantly reduce NET's cost of capital.

Commission Staff

The Commission Staff presented the testimony of Merwin R. Sands, who concluded that a capital structure containing 40-45% long term debentures and 55-60% common equity is appropriate for NET. The Staff believes that its recommended capital structure is consistent with a debt rating in the single to double-A range.

The Staff's conclusions were based on a review of the Company and intervenor testimony, consideration of NET's business risk and borrowing margin, and the evaluation of industry capital structures. Staff agreed with the Company's proposed capital structure and its argument for a borrowing margin but believes the Company's evaluation of its business risk is exaggerated. Staff argued that industry changes do not represent increases in business risk per se but only to the extent that such factors impact the revenue and profit stability of the Company. In Staff's view, NET is a financially healthy company playing the role of market leader in a high growth service territory and is quite capable financially, managerially and technologically of mitigating the adverse effects of industry changes on revenues and operating profit.

III. Commission Analysis

[1] The Commission upon hearing the evidence concludes that although a precise quantification of an optimal debt ratio is an unreasonable expectation, the specification of a range is both possible and sufficient. The Commission finds that the appropriate range for NET's

capital structure is 40-45% long term debt and 55-60% common equity. NET's existing capital structure of 40% debt and 60% common equity is

considered to be at the margin of the zone of reasonableness.

The Commission believes that the capital structure range specified above is in the best long term interest of both ratepayers and the Company given current economic and operating conditions. As a financially healthy telephone franchise, NET can reasonably be expected to deliver service of high quality at a reasonable cost.

Business Risk

[2] The Commission accepts the arguments of the Company witnesses that the optimal debt ratio declines as business risk increases. We also accept the definition of business risk proposed by Mr. Benson as well as the definitions used by the other witnesses. Regarding those definitions, however, we find that the effects of postdivestiture changes on "... the ability of the Company to maintain the value and earnings power of its assets ... " (Exhibit No. 5, page 6) or on the "uncertainty inherent in projections of future operating income" (Exhibit No. 1, page 26) have been exaggerated. The Commission believes that, although NET is somewhat more risky as a result of divestiture, the determinants of business risk need to be weighed against the ability of the Company to manage such circumstances.

We agree with Staff's arguments that the NYNEX corporate structure has allowed the Company to successfully meet challenges from threats of bypass and competition and promise to do so in the future. The financial strength and the technological advantage afforded NET by its NYNEX corporate structure has put it in the forefront of the developing telecommunications industry. In addition, the economic vitality of NET's service territory helps mitigate the effects of industry changes on the financial performance of NET.

As Mr. Benson points out the telephone common equity ratios are significantly higher than for the electrics but the percentage rise in the common equity ratios of the BOC's since divestiture has been only slightly higher than the corresponding rise for electric utilities. Furthermore, the revised changes in credit quality standards recently published by the major credit rating agencies and discussed by Mr. Benson represent a small increase in stringency which is, in our view, commensurate with the small rise in business risk. Finally, as Staff has concluded, the threat of competition and bypass are essentially issues of rate design. The Commission has, in fact, implemented newly designed rates in the past with these issues in mind.

Borrowing Margin

[3] The Commission accepts the arguments of Company and Staff witnesses that NET must maintain a borrowing reserve. The current double-A credit rating is a source of borrowing capacity to the extent that the Company's debt could be downgraded by one full rating grade without dropping below the investment grade level. The Commission finds that a credit rating of BBB+ to A- recommended by Mr. Winter provides essentially no margin for financial contingencies.

Industry Norms

The Commission accepts the arguments put forth by Company and Staff witnesses that capital costs rise significantly as a company's capital structure begins to deviate from industry standards, which for the telephone industry is 40-45% debt and 55-60% common equity. We believe, therefore, that preferred equity in the capital structure and/or more than 45% long term debt would increase capital costs significantly. On the other hand, at the present we see no ratepayer benefit from reducing the debt ratio below 40%.

Modeling Exercises

The Commission shares Staff's reservations regarding the construction and

Page 323

implementation of the models submitted as evidence by Company witness Hadaway and DOD witness Winter. We agree with Staff that the models can, "if applied carefully using the correct and appropriate values of the input variables, be of help in describing the relationship between capital structure and the weighted average cost of capital of the Company." Exhibit No. 10, page 1. As such, we find that the models are incomplete in that they omit considerations of business risk, borrowing margins, industry standards and the relationship between capital structure and non-capital costs. In contrast we note the comprehensiveness of the model produced by Professor Brigham. Although Professor Brigham's model depends on many of the same assumptions and input variables, NET's operational as well as financial circumstances are considered. Due to the use of inappropriate input values we determine that Mr. Winter's model results are not credible. We note, in addition that the model was eventually abandoned by its author.

Regulatory Exploitation

[4] The Commission has taken under advisement the point raised by Mr. Winter that it may be possible for companies to exploit the regulatory process by adjusting the capital structure for the benefit of stockholders. While the point is not sufficiently developed in the record to allow a finding on this issue, the Commission finds that the appropriate determination of the cost of equity may nullify any attempts at exploitation. The Commission believes that no such exploitation is currently being practiced by NET in the State of New Hampshire.

Our Order will issue accordingly.

ORDER

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

ORDERED, that the capital structure containing 40% to 45% long term debt and 55% to 60% common equity is found to be reasonable for the Company; and it is

FURTHER ORDERED, that any deviations in the future from said reasonable range will require justification in future rate proceedings; and it is

FURTHER ORDERED, that the Commission will consider establishing a hypothetical capital structure for use in any future proceedings should the aforementioned reasonable range be unjustifiably breeched; and it is

FURTHER ORDERED, that Docket DR 85-181 be, and hereby is, closed.

By order of the Public Utilities Commission of New Hampshire this fifteenth day of July, 1987.

FOOTNOTES

[1]Mr. Winter cited during oral testimony the following two papers which show how managements of regulated companies through the manipulation of capital structures can earn higher rates. Neither paper was made part of the public record.

a) Robert A. Taggart, Jr., "Rate of Return Regulation and Utility Capital Structure Decisions", Journal of Finance, May 1981, pp. 383-399.

b) _____, "Effects of Regulation on Utility Financing: Theory and Evidence", The Journal of Industrial Economics, March 1985, pp. 257-276.

==========

NH.PUC*07/15/87*[60298]*72 NH PUC 324*New Hampshire Electric Cooperative, Inc.

[Go to End of 60298]

72 NH PUC 324

Re New Hampshire Electric Cooperative, Inc.

DE 87-130
Order No. 18,771

New Hampshire Public Utilities Commission

July 15, 1987

ORDER nisi authorizing an electric utility to place and maintain electric power cables across public waters.

Page 324

ELECTRICITY, § 7 — Authorization for transmission lines — Cables crossing public waters — Electric cooperative.

[N.H.] An electric cooperative was conditionally authorized to place and maintain electric power cables across public waters; the commission found that the crossing appeared to be in the public good and that the cooperative had obtained the necessary right-of-way easement.

By the COMMISSION:

ORDER

WHEREAS, on July 2, 1987, the New Hampshire Electric Cooperative, Inc. filed with this commission a petition seeking a license pursuant to RSA 371:17 to place and maintain an approximately 310 foot electric power line consisting of two 1/0 ACSR conductors of which a section of this line will be over and across Lake Winnipesaukee in Moultonboro, New Hampshire; and

WHEREAS, the petitioner plans to construct the 7200 volt line with a minimum vertical clearance of 50 feet over the water from the mainland to Big Goodwin Island; and

WHEREAS, the proposed customer, Mr. David DeJager, owns Big Goodwin Island and abutting mainland property and has provided the right-of-way easement; and

WHEREAS, the proposed construction appears to be in the public good; and

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

ORDERED, that all persons interested in responding to his 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 August 3, 1987; and it is

FURTHER ORDERED, that the petitioner effect said notification by publication of this order once in The Union Leader. Such publication to be no later than July 27, 1987 and designated in affidavits to be made on a copy of this order filed with this office; and it is

FURTHER ORDERED, NISI that the petitioner be authorized, pursuant to RSA 371:17 et seq to place and maintain electric lines over and across the public waters of Lake Winnipesaukee in Moultonboro, New Hampshire; and it is

FURTHER ORDERED, that all construction meet requirements of the National Electrical Safety Code and all other applicable safety standards; and it is

FURTHER ORDERED, that such authority shall be effective 20 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 fifteenth day of July, 1987.

==========

NH.PUC*07/17/87*[60296]*72 NH PUC 316*Public Service Company of New Hampshire

[Go to End of 60296]

72 NH PUC 316

Re Public Service Company of New Hampshire

DR 86-122
15th Supplemental Order No. 18,769

New Hampshire Public Utilities Commission

July 17, 1987

ORDER adopting a settlement agreement regarding electric rate refunds.

REPARATION, § 39 — Award of reparation — Settlement agreement — Overcollections pursuant to rates implemented under bond — Electric utility.

[N.H.] The commission adopted a settlement agreement designating a plan for the refund of overcollections received by an electric utility pursuant to rates implemented under bond.

Page 316

By the COMMISSION:

Report Regarding Refund and Due Date for Quantification

On June 29, 1987 the Commission issued its Report and Order setting just and reasonable rates as a result of the proposed tariff filing in this docket. In that Report and Order, the Commission provided until July 13, 1987 for the parties to file a plan to refund overcollections by PSNH due to rates implemented under bond. In addition, the Commission indicated that PSNH should file a quantification of the loss of Concord Electric Company and Exeter and Hampton Electric Company, but provided no due date for that filing. On July 13, 1987, the parties filed a refund plan. This Report and Order approves the plan submitted by the parties on July 13, 1987 and sets August 3, 1987 as the due date for PSNH's quantification.

The Commission finds that the agreement filed by the parties on July 13, 1987, which is attached hereto as an appendix, provides for a reasonable disposition of the issues regarding the refund in this docket. The Commission notes that there was a relatively small amount of evidence on this matter before the Commission. Thus, the Commission adopts the settlement agreement regarding refunds filed July 13, 1987 by the parties as the reasonable resolution of the refund issues in this docket and orders PSNH to comply with it.

In addition, the Commission notes that it has not yet received any PSNH quantification of the loss of Concord Electric Company and Exeter and Hampton Electric Company discussed in Report and Order of June 29, 1987. Thus, the Commission deems it appropriate to set the due date for said quantification. The Commission orders that such quantification shall be filed on or before August 3, 1987.

Our Order will issue accordingly.

SUPPLEMENTAL ORDER

Upon consideration of the foregoing Report, which is incorporated herein by reference; it is hereby

ORDERED, that Public Service Company of New Hampshire shall provide refunds in the

manner specified in the Settlement Agreement Regarding Refunds filed on July 13, 1987 that is appended hereto; and it is

FURTHER ORDERED, that Public Service Company of New Hampshire shall file its quantification of the loss of Concord Electric Company and Exeter & Hampton Electric Company as discussed in Commission Report and Order No. 18,726 (72 NH PUC 237) (June 29, 1987) on or before August 3, 1987.

By order of the Public Utilities Commission of New Hampshire this day of July, 1987.

Appendix

SETTLEMENT AGREEMENT REGARDING REFUNDS

This Settlement Agreement is made and entered into by and among Public Service Company of New Hampshire ("PSNH" or the "Company") and the undersigned parties.

INTRODUCTION

On June 29, 1987 the Commission issued its Report and Fourteenth Supplemental Order, No. 18,726 in Public Service Company of New Hampshire's rate case, Docket No. DR 86-122. In its Report, the Commission found that the circumstances of the case required that an acceptable refund plan should be customer specific with interest calculated at 10%, and provided the parties an opportunity to reach a mutually acceptable refund plan and submit it to the Commission for approval.

Representatives of PSNH, the Commission Staff, the Consumer Advocate and the Campaign for Ratepayers Rights met to attempt to agree on a refund plan on July 7,

1987 and July 10, 1987. Based upon the recommendation of the Campaign for Ratepayers Rights and the Consumer Advocate, the parties have agreed to a refund methodology based on recalculation of customer bills subject to the following terms and conditions.

ARTICLE I

The refund amount for each customer, excluding interest, shall be determined by totaling all amounts billed to each customer during the period bonded rates were in effect; recalculating all monthly bills rendered under the bonded tariff in accordance with the rates as finally determined by the Commission to be just and reasonable in this docket, using the ECRM rate in effect during the period January to June 1987; and subtracting the total of the recalculated bills from the total amount actually billed to each customer under the bonded tariff to determine the refund amount.

The total refund for each customer shall be the refund amount plus interest determined in accordance with Article IX below.

Customers who received an estimated bill for January 1987 and/or June 1987 will receive a refund based on average daily use for month(s) in which an estimated bill was rendered. Average daily use shall be calculated by dividing the total kilowatt hours sold between actual meter readings by the number of days in the period between actual meter readings.

As noted in Article VI below, customers who have initiated service with PSNH after June 30,

1987 shall not be included in the refund group.

ARTICLE II

For each active customer the,refund, calculated as described above, will be credited to that customer November 1987 bill (including final billed customers whose use changed or who moved within the PSNH system during the period and whose refund must be calculated manually). The total refund, amount shall be shown as a one line credit on the customer's bill. The Company will mail refund checks to customers who have left the PSNH system and who are entitled to a refund in accordance with Articles III and V below in the month of November.

ARTICLE III

In the case of all customers with outstanding balances owed to the Company (including but not limited to customers who have left the system, customers who changed their type of service during the bonded rate period, customers moving within the PSNH system during the bonded rate period, customers who have been terminated and customer accounts that have been written off as uncollectible) any refund due the customer shall first be applied to the outstanding balance owed.

ARTICLE IV

In the event the refund exceeds a customers November bill a credit shall be carried forward to the next months bill.

ARTICLE V

Checks shall be mailed to only those customers who have left the PSNH system, provided the amount owed equals or exceeds one dollar ($1.00). Amounts less than one dollar owed to customers who have left the PSNH system shall be donated to the Neighbor Helping Neighbor Fund unless the customer specifically requests the refund within one year. Customers requesting refunds of less than one dollar will receive the refund in postage stamps, rather than by check. Customers shall have no right to refund amounts unclaimed after one year (i.e. checks returned to PSNH by the Post Office, checks not cashed within six months and refund amounts less than one dollar not claimed by the customer) and all unclaimed amounts shall be donated to the Neighbor Helping Neighbor Fund.

ARTICLE VI

Customers initiating service with PSNH after June 30, 1987 will not be included in the refund group and will not receive a refund.

ARTICLE VII

Interest at the rate of 10% shall be paid on the refund amount, for the period January through June 1987 in accordance with the Commission's final order in the case. Interest shall be calculated for each customer for the period January through June 1987 consistent with the following formula:

INTEREST AMOUNT JANUARY THROUGH JUNE EQUALS

refund amount x 10% interest rate x (5.5)

2 12

The divisor 2 produces the average refund balance over the period. The divisor 12 produces a monthly interest rate. The multiplier 5.5 represents the five and onehalf months in which the refund was accrued (January was prorated and is the onehalf month).

ARTICLE VIII

The parties considered it unclear as to whether the 10% interest rate was to continue beyond June 30, 1987 and in light of the circumstances, the parties recommend that interest be calculated for the period July through October 1987 for each cus- tomer consistent with the following formula:

INTEREST AMOUNT JULY THROUGH OCTOBER

[Equation below may extend beyond size of screen or contain distortions.]

$$\text{refund amount} \times \frac{6.5\% \text{ interest rate}}{12} \times (4.5)$$

It is not necessary to divide the refund amount by two as the entire refund amount will be outstanding for the number of billing cycles between June 1987 and November. According to PSNH, the 6.5% interest rate is the approximate interest rate earned by PSNH on the refund amounts held by the Company. The 4.5 represents the approximately four and one half months the refund amount is outstanding.

ARTICLE IX

The total interest paid to each customer shall equal the interest calculated as described in Article VII for the period January through July 1987 plus interest calculated as described in Article VIII for the period July through October 1987.

ARTICLE X

A written explanation of rate changes and notification of the refunds shall be provided to each customer during the August billing cycle. An explanation of the refund shall be provided to each customer as a bill insert during the November billing cycle. Customers who have left the PSNH system and receive refunds by check will receive the same refund information provided to active customers.

PSNH shall provide copies of draft notices to be provided to customers during the August billing cycle to the parties for review and comment as promptly as possible prior to publication. A copy of the draft explanation of the refund to be provided to customers during the November billing cycle shall be provided to the parties for review and comment by September 15, 1987.

ARTICLE XI

Each Article of this Settlement Agreement is in consideration and support of every other Article and is presented to the Commission for approval in its entirety and without change or condition. The discussions which have produced this Settlement Agreement have been conducted on the explicit understanding that all offers of settlement and discussions relating thereto are and shall be without prejudice to the

position of any party or participant presenting such offer or participating in any such discussion and are not to be used in any manner in connection with this proceeding, as precedent in any future proceeding or otherwise. Without limiting the foregoing, it is expressly recognized that the original PSNH proposal would have provided refunds over the July 1, 1987 to December 31, 1987 time period, and according to PSNH, the customer specific methodology herein cannot result in refunds until November 1987.

This Settlement Agreement is entered into this 13th day of July 1987 by and among the undersigned parties, who represent that they are fully authorized to do so on behalf of their principals.

This Settlement Agreement was signed by:

Catherine E. Shively, Attorney
For Public Service Company of
New Hampshire

Martin C. Rothfelder, Attorney
for the New Hampshire Public
Utilities Commission

Michael Holmes
Consumer Advocate

Mary K. Metcalf, Member of the Board
of Directors for the Campaign for
Ratepayers Rights

Dom S. D'Ambruoso, Attorney
for the Business and Industry
Association

==========

[Go to End of 60299]

72 NH PUC 325

Re Manchester Water Works

DE 87-123
Order No. 18,772

New Hampshire Public Utilities Commission
July 20, 1987

ORDER nisi authorizing a water utility to extend its service area.

SERVICE, § 210 — Water — New territory.

[N.H.] A water utility was granted conditional authority to extend its mains and service into an area outside its then existing service area; no other utility had franchise rights in the area sought and the commission was satisfied that the extension was in the public good.

By the COMMISSION:

ORDER

Page 325

WHEREAS, Manchester Water Works, a water public utility operating under the jurisdiction of this Commission in areas served outside the city of Manchester, by a petition filed June 25, 1987, 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, 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 submit their comments to the Commission or may submit a written request for a hearing in this matter no later than August 3, 1987; 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 be no later than July 27, 1987, 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:

An area to include all properties abutting Morrill Road within a distance of 475 feet easterly from the easterly boundary on Morrill Road as established by Order No. 18,708 (72 NH PUC 223) in docket DE 87-89.

and it is

FURTHER ORDERED, that such authority shall be effective on August 10, 1987 unless a request for hearing is filed with 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 twentieth day of July, 1987.

==========

NH.PUC*07/20/87*[60300]*72 NH PUC 326*Portland Pipe Line Corporation

[Go to End of 60300]

72 NH PUC 326

Re Portland Pipe Line Corporation

Additional party: Granite State Gas Transmission, Inc.

DE 87-34
Order No. 18,773

New Hampshire Public Utilities Commission

July 20, 1987

ORDER approving the lease of an interstate oil pipeline to a natural gas utility for conversion to and operation in natural gas transmission service.

GAS, § 7 — Pipeline operations — Lease of interstate oil pipeline for conversion to and operation in gas utility service — State commission approval.

[N.H.] The lease of an interstate oil pipeline to a natural gas utility for conversion to and operation in natural gas transmission service was approved as in the public interest where (1) the utility alleged that the pipeline would provide a link to a new supply source and delivery system that would increase reliability of utility service, and (2) the utility had applied to the Federal Energy Regulatory Commission for pre-approved abandonment of the oil pipeline to gas service.

By the COMMISSION:

Page 326

ORDER

WHEREAS, on March 3, 1987, Portland Pipe Line Corporation ("Portland") petitioned the Commission (a) to rule that the Commission has no jurisdiction over Portland's lease of certain property to Granite State Gas Transmission, Inc. ("Granite"), because the Commission's jurisdiction with respect thereto is pre-empted by federal law, or (b) if the Commission should conclude that its jurisdiction is not federally preempted, then, to the extent of such jurisdiction, to approve the lease transaction; and

WHEREAS, Portland owns three parallel pipelines — a 24" line, an 18" line and a 12" line — extending from the Atlantic Coast at South Portland, Maine, across the States of New Hampshire and Vermont, to the international boundary between the United States and Canada at North Troy, Vermont and Highwater, Quebec; and

WHEREAS, Portland presently operates the 24" line only for the transportation of crude oil under customs bond in foreign commerce, the 18" line having previously taken out of service during the summer of 1986, and the 12" line having been permanently taken out of service and

abandoned in March, 1984; and

WHEREAS, Portland, pursuant to the terms of an agreement to lease dated October 14, 1986 has agreed to lease the 18" line to Granite, for conversion to, and use by Granite, in natural gas transmission service; and

WHEREAS, Granite is a wholly owned subsidiary of Northern Utilities, Inc. ("Northern") a New Hampshire gas public utility which distributes natural gas to residential, commercial and industrial customers in some of the principal coastal communities of New Hampshire; and

WHEREAS, Granite alleges that conversion by Granite of Portland's 18" line to natural gas service will provide a link to a new supply source and a delivery system that will increase the reliability of service to Northern's customers in New Hampshire and will result in rate reductions to Granite customers; and

WHEREAS, Portland as an operator of an interstate pipeline through which is transported only crude oil under customers bond in foreign commerce, Portland's activities are solely interstate in nature; and

WHEREAS, Portland's pipeline system is subject to the agreement between the United States of America and Canada: Transit Pipelines, January 28, 1977, T.I.A.S. No. 8720; and

WHEREAS, pursuant to Sections 7(b) and 7(c) of the Natural Gas Act of 1938, and Part 157 of the regulation thereunder, Granite filed with FERC on October 27, 1986 an application for pre-approved abandonment of the 18" line in natural gas service; and

WHEREAS, the Federal Energy Regulatory Commission ("FERC") has plenary jurisdiction over Granite's request for preapproved abandonment of the 18" line in natural gas service as of March 31, 1986; and

WHEREAS, the Commission finds that the conversion of the 18" oil line to a natural gas line is in the public interest; it is hereby

ORDERED, that Portland's lease of its 18" line to Granite for conversion to, and operation in, natural gas transmission service on or after March 31, 1986 is approved.

By order of the Public Utilities Commission of New Hampshire this twentieth day of July, 1987.

==========

NH.PUC*07/28/87*[60301]*72 NH PUC 328*Public Service Company of New Hampshire

[Go to End of 60301]

72 NH PUC 328

Re Public Service Company of New Hampshire

DR 86-122
16th Supplemental Order No. 18,774

New Hampshire Public Utilities Commission

July 28, 1987

ORDER denying a request for rehearing of a utility cost of capital determination

---

1. RETURN, § 26 — Cost of capital — Method for determining — Effect of construction work in progress.

[N.H.] State statute RSA 378:30-a prohibits the provision of a return on utility construction work in progress; nevertheless, the statute does not confine the commission to a particular formula or methodology for determining the cost of capital for utilities that have construction work in progress. p. 329.

2. RETURN, § 26 — Cost of capital — Method for determining — Tracing of capital to certain investments — Electric utility.

[N.H.] The tracing of capital to certain investments was deemed to be inappropriate in a proceeding to determine the cost of capital for an electric utility; specifically, the commission rejected a proposal to exclude the cost of capital traced to cancelled plant and construction work in progress in setting the rate of return for an electric utility. p. 329.

By the COMMISSION:

REPORT REGARDING THE CONSUMER ADVOCATE MOTION FOR REHEARING

I. INTRODUCTION AND SUMMARY

On July 17, 1987, the Consumer Advocate filed a Motion for Rehearing in this docket which asserts that the Commission's use in ratemaking of PSNH's actual overall weighted cost of capital to develop a return on PSNH's rate base violates RSA 378:30-a. According to the Consumer Advocate, RSA 378:30-a dictates that the Commission instead trace portions of the PSNH capital structure to the Seabrook construction project (Units I and II) and exclude this capital in developing a cost of capital for PSNH. For reasons stated below, the Commission finds that RSA 378:30-a does not constrain the Commission in this manner and further finds that such tracing of capital to plant covered by RSA 378:30-a has not been shown to provide a reasonable rate of return for PSNH.

II. THE COMMISSION ACTION AND THE CONSUMER ADVOCATE POSITION

In its Report and Order issued on June 26, 1987 the Commission did not allow any PSNH investment in the Seabrook construction project or any other construction work in progress (CWIP)[1](78) in rate base.[2](79) Similarly, no depreciation or other expense was provided for such investment. The Commission took such actions to comply with RSA 378:30-a.

In that Report and Order the Commission also set a rate of return for the Company to earn on its rate base. The Commission noted its authority to use a hypothetical rather than PSNH's actual capital structure to develop this rate of return. See also: Re New England Teleph. & Teleg. Co. v. New Hampshire, 104 N.H. 229, 236, 44 PUR3d 498, 183 A.2d 237 (1962). However, in setting that return, the Commission utilized the Company's actual capital structure on August 31, 1986. The capital structure that the Commission adopted included deletions from retained earnings for the Company's write-offs of the cancelled Seabrook II and Pilgrim II plants. Such deletion results in less common equity and, in relative terms, more debt in the capital structure. In utilizing this actual capital structure to set a rate of return, the Commission found no reasonable grounds for use of a hypothetical capital structure and further found that

the capital structure it used best represents the reality of the PSNH capital structure.

The Consumer Advocate takes no issue with the Commission's exclusion of CWIP from rate base and disallowance of any expense related to CWIP. However, the Consumer Advocate asserts that RSA 378:30-a requires more. The Consumer Advocate argues that RSA 378:30-a requires the Commission to use a capital structure that is a hypothetical capital structure developed by a particular methodology. This capital structure would have its roots in the actual capital structure, for it would adjust the actual capital structure to take out capital traced to financing of the Seabrook Units. The Consumer Advocate makes no recommendation for tracing other CWIP and instead seems to indicate that the statute does not require such precision. (Consumer Advocate Brief, at 6-7).

III. COMMISSION ANALYSIS

[1, 2] In the Commission's view, RSA 378:30-a does not allow the Commission to provide return on or of construction work in progress. See generally: Re Public Service Co. of New Hampshire, 125 N.H. 46, 60 PUR4th 16, 480 A.2d 20 (1984). However, the Commission rejects the notion that RSA 378:30-a confines the Commission to a particular formula or methodology for determining cost of capital for PSNH and any other company that has CWIP. However, the Consumer Advocate argument asserts that the statute in this instance confines the Commission to use of the actual capital structure minus capital components addressed to particular items of CWIP (Seabrook Units I and II).

That argument by the Consumer Advocate conflicts with the long outstanding case law

holding that the Commission is not constrained to any particular formula or methodology in setting a rate of return in the ratemaking process. See e.g.: New England Teleph. & Teleg. Co. v. New Hampshire, 104 N.H. 229, 234, 44 PUR3d 498, 183 A.2d 237 (1962). We find no basis to believe that RSA 378:30-a intends to overturn this basic aspect of regulatory law and eliminate the Commission's discretion in setting the rate of return component in developing just and reasonable rates.

The New Hampshire Supreme Court has stated that RSA 378:30-a is designed to eliminate the Commission's discretion to allow rates based on CWIP. Re Public Service Co. of New Hampshire, 125 N.H. 46, 51 60 PUR4th 16, 480 A.2d 20 (1984). The Court has further held that the statute is the culmination of the opposition to the allowance of CWIP in rate base. Id. The Court has also inferred that the Commission may not artificially raise the return to circumvent the restrictions on including CWIP in rate base or other expenses related to CWIP. Id., at 55. The Commission believes its actions of not including the CWIP in rate base and not including other items related to CWIP in expense provide compliance with RSA 378:30-a. The Commission's utilization of the PSNH capital structure to set a rate of return is the choice of what data should be used to set a rate of return. It does not constitute placing CWIP in rates or altering the return to circumvent the restrictions against CWIP in rates.

In addition, the Commission finds no grounds in the statute to justify imprecision where precision may be possible. The Commission believes it has been precise in excluding from rate base items covered by RSA 378:30-a. The Commission finds no basis for the Consumer Advocate's suggestion that it may ignore PSNH investment in the cancelled Pilgrim II plant and investment in other CWIP.

The Commission also finds the tracing of capital to certain investments inappropriate based on the record in this case. The exclusion of retained earnings and thus equity for the cancelled plants, Seabrook II and Pilgrim II, is appropriate, for such action most accurately reflects the accounting treatment for these plants and the impact of these cancelled plants on the capital structure. The Commission notes that, if tracing is possible, much of Seabrook II or Pilgrim

II may have been financed by debt. Nevertheless, that debt remains an obligation of PSNH upon which PSNH is expected to continue payment. The losses in those plants are losses of the equity holders. The treatment the Commission has provided is in line with that reality. The Consumer Advocate's recommendation is not.

The Commission also cannot find that the particular formula for rate of return advocated by the Consumer Advocate with the exclusion of capital traced to certain property necessarily aids in the goal of setting a rate of return for a utility company. Other tribunals have, in other circumstances, found it inappropriate to actually trace funds to particular investments in developing the capital structure of a regulated utility for ratemaking. See, e.g.: General Teleph. Co. of the Southwest, v. Texas Pub. Utility Commission, 628 S.W.2d 832, 843 (Tex.App.1982); Missouri ex rel Associated Nat. Gas Co. v. Missouri Pub. Service Commission, 706 S.W.2d 870,

877-880 (Mo.App.1985); and Re Pacific Gas Transmission Co., 59 F.P.C. 642, 644, 645, Opinion No. 811 (1977). While the Commission does not address the more general question of whether such tracing of funds is ever appropriate in developing a rate of return, it cannot find that the tracing that the Consumer Advocate argues for will lead to a proper determination of the rate of return for PSNH in this docket.

Our Order will issue accordingly.

SUPPLEMENTAL ORDER

In consideration of the foregoing Report regarding the Consumer Advocate Motion for Rehearing, which is incorporated herein by reference; it is

ORDERED, that the Consumer Advocate's Motion for Rehearing is denied.

By Order of the Public Utilities Commission of New Hampshire this twenty-eighth day of July, 1987.

FOOTNOTES

[1]Construction work in progress (CWIP) as used herein means all plant which is either under construction or upon which construction has ceased, and that is not yet providing service to customers. Re Public Service Co. of New Hampshire, 125, N.H. 46, 60 PUR4th 16, 480 A.2d 20 (1984).

[2]Rate base is the depreciated investment in plant plus working capital that the Commission authorizes the Company to earn a return on. Re Public Service Co. of New Hampshire, 125 N.H. 46, 4a, 60 PUR4TH 16, 480 A.2d 20 (1984).

==========

NH.PUC*07/30/87*[60303]*72 NH PUC 330*Public Service Company of New Hampshire

[Go to End of 60303]

72 NH PUC 330

Re Public Service Company of New Hampshire

DR 86-122
17th Supplemental Order No. 18,775

New Hampshire Public Utilities Commission

July 30, 1987

MOTION for rehearing on electric rate order; denied.

---

1. RETURN, § 26.1 — Capital structure — Actual versus hypothetical structure — Factors.

[N.H.] The commission affirmed its use of an actual capital structure for an electric utility, even though plant cancellation costs, required to be written off against equity, had resulted in a low equity ratio for the utility; an actual capital structure was found to reflect more accurately the utility's financial condition. p. 332.

2. RETURN, § 26.2 — Cost of debt — Studies — Acceptance of methods used.

[N.H.] Language in a commission order was amended to clarify that a utility's agreement to use the results of a commission staff study on the cost of debt and preferred stock did not mean that the utility had agreed with the methodology used by staff in the study. p. 332.

3. RETURN, § 25 — Reasonableness — Factors — Returns of comparable entities — Maximum.

Page 330

[N.H.] Rejection of a proposed 19% return on equity for an electric utility, and substitution of a 15% return on equity, were affirmed, with the commission noting that such action was based on returns for comparable utilities and on the utility's level of investment (amounting to four times its rate base) in a troubled nuclear power plant construction project; the decision had not been based on the idea that a United States Supreme Court decision had placed upper limits on utility returns, as the court decision mandated only a return commensurate with that of other businesses with comparable risks, as long as it allowed financial soundness and prevented the level of profits usually realized by highly profitable or speculative ventures. p. 334.

4. EXPENSES, § 114 — Taxes — Accounting methods — Normalization versus flow through.

[N.H.] Although the commission has adopted uniform accounting standards used by federal agencies for the purposes of accounting and recordkeeping, the commission has discretion to choose either normalization or flow through methods when it comes to rate-making treatment, regardless of what federal agency standards might be, and the commission therefore affirmed its use of flow through for an electric utility's pre-1971 assets, in recognition of the differences that can arise because of tax accounting versus book accounting treatment of an asset. p. 335.

5. VALUATION, § 192.1 — Deferred tax accruals — Rate base adjustment — Tax reform.

[N.H.] Where lower tax rates established in the Tax Reform Act of 1986 were taken into

account when setting an electric utility's income tax expense level, there was no need to make a separate adjustment to rate base to reflect different accruals of deferred taxes. p. 336.

By the COMMISSION:

REPORT REGARDING PSNH MOTION FOR REHEARING

I. INTRODUCTION AND SUMMARY

On June 29, 1987, the Commission issued Report and 14th Supplemental Order No. 18,726 (72 NH PUC 237), which authorized a rate increase pursuant to the filing and suspension of the proposed tariffs in this docket. On July 20, 1987, Public Service Company of New Hampshire (PSNH) filed a Motion for Rehearing asserting that five particular aspects of that Report and Order result in a Report and Order that is unlawful or unreasonable. Specifically, PSNH alleged that the Report and Order:

1. did not allow a just and reasonable capital structure for ratemaking purposes;

2. made incorrect and improper findings with regard to the calculation of the cost of debt and preferred equity;

3. did not determine a lawful, just and reasonable cost of common equity capital;

4. violated PUC regulations by providing flow through treatment of book versus tax timing differences for pre-1971 plant additions; and

5. failed to permit appropriate adjustments to accumulated deferred taxes in rate base to properly reflect the impact of the Tax Reform Act of 1986.

This Report and Order generally denies PSNH's Motion for Rehearing, but amends the findings in the June 29, 1987 Report and Order with regard to calculation of the cost of debt and preferred equity. This Report and Order also elaborates on or clarifies the June 29, 1987 Report and Order discussion regarding return on equity and on the tax issues that PSNH addresses.

II. PSNH CAPITAL STRUCTURE

A. PSNH Position and Commission Action

In setting the rate of return for cost of capital on the PSNH rate base, the Commission

utilized the Company's actual

capital structure on August 31, 1986. The capital structure that the Commission adopted included deletions from retained earnings for the Company's write-offs of the cancelled Seabrook II and Pilgrim II plants. Such deletion results in less common equity and, in relative terms, more debt in the capital structure. In utilizing this actual capital structure, the Commission noted its authority to adopt a capital structure that differs from the actual capital structure for ratemaking purposes. See also: New England Teleph. & Teleg. Co. v. New Hampshire, 104 N.H. 229, 236, 44 PUR3d 498, 183 A.2d 237 (1962). However, the Commission found no reasonable grounds for use of a hypothetical capital structure rather than one which is reflective of PSNH's actual capital structure. The Commission also found that the capital structure it used best represented the reality of the PSNH capital structure.

In its Motion for Rehearing, PSNH asserts that the Commission should have utilized a hypothetical capital structure by increasing the equity ratio of the capital structure for ratemaking purposes. According to PSNH, one reason for such action is that PSNH cannot actually increase the equity component until dividends are restored or until its stock price has recovered. PSNH also alleges that it is more proper to provide a hypothetical capital structure to reflect a blended cost of capital for cancelled plant. PSNH claims that increasing the equity ratio would have that effect. According to PSNH, such a blended cost of capital assigned to cancelled plant would provide symmetry with treatment of plants that customers pay for. According to PSNH, a ratepayer pays for such a plant when included in rate base at the blended cost of capital. Assigning the same blended cost of capital to cancelled plant as one assigns to plant included in rate base would result in the same cost for the same plant.

B. Commission Analysis

[1] PSNH's argument in this part of its Motion for Rehearing does not assert that the Commission has made a mistake of law in providing this capital structure. Upon reexamining the matter, the Commission still finds that the use of the actual capital structure in this matter is most appropriate for reasons provided in the original Report and Order, as further elaborated in the Report Regarding The Consumer Advocate Motion For Rehearing issued July 28, 1987. As is developed in those prior orders, the Commission believes that the actual capital structure most appropriately reflects the reality of the PSNH capital structure results in a just and reasonable return. The reality of plant cancellation costs is that financial and accounting requirements provide that these costs should be written off against equity alone and that hypothetical symmetry between in-service and cancelled plant does not exist in reality. Furthermore, the Commission finds that it should set a rate of return to result in just and reasonable rates, not to achieve a hypothetical symmetry for the cost of cancelled plant. Thus, this aspect of the PSNH Motion for Rehearing shall be denied.

III. COST OF DEBT AND PREFERRED STOCK

[2] In another argument in its Motion for Rehearing, PSNH alleges that the Commission may have improperly found that the Staff used "the accounting based embedded methodology as adopted by the Commission in DR 77-49, Re Public Service Co. of New Hampshire" when calculating cost of debt and preferred equity in this docket. PSNH alleges that such a finding would violate the agreement of the parties to utilize the results of the Staff's methodology without agreeing on the Staff's methodology. The Commission finds PSNH's concern over the first sentence on page 39 of the Commission's Report of June 29, 1987 reasonable.[1(80)] Thus, the Commission shall strike that sentence and insert the following two sentences:

Page 332

The Staff testimony stated that it used the accounting based embedded methodology as adopted by the Commission in DR 77-49, Re Public Service Co. of New Hampshire, 63 NH PUC 127 (1978). Staff's testimony obtained results of 13.28 percent on preferred stock and 15.28 percent on long term debt.

IV. COST OF EQUITY

A. Commission Action and PSNH Position

In its Report and Order, the Commission set a return on equity for PSNH at 15 percent. PSNH asserts that the June 29, 1987 Report and Order indicates that the standard developed in Bluefield Water Works & Improv. Co. v. West Virginia Pub. Service Commission, 262 U.S. 679, PUR1923D 11, 67 L.Ed. 1176, 43 S.Ct. 675 (1923) restricted the Commission from providing PSNH with the 19 percent return on equity which it requested. PSNH asserts that this reading of Bluefield is inaccurate and that the Commission Report and Order is also unreasonable and unlawful because it failed to articulate standards to develop a just and reasonable cost of common equity. The Commission readdresses the Bluefield standard and further articulates reasons for setting return on equity at 15 percent below.

B. Legal Standard for Setting Rate of Return

U.S. Supreme Court construction of the U.S. Constitution's prohibition against confiscation of property without due process of law provides the legal considerations involved in setting a return on equity. As the PSNH brief in this case describes, Staff witness Voll and various PSNH witnesses focus on this federal standard. While in some areas the New Hampshire constitution provides more protection than the U.S. Constitution, N.H. Supreme Court decisions seem to indicate that in this area there is no separate N.H. standard. See e.g.: Legislative Utility

Consumers' Council v. Public Service Co. of New Hampshire, 119 N.H. 332, 340-342, 31 PUR4th 333, 402 A.2d 626 (1979). Thus, the Commission looks to the federal standard for legal guidance.

One of the seminal and perhaps most often quoted cases in this area is Bluefield Water Works and Improv. Co. v. West Virginia Pub. Service Commission, 262 U.S. at 692, 693, PUR1923D at 20, 21, (1923) [hereinafter cited as Bluefield]. In a frequently quoted passage from that case the Court stated the requirements of allowing a utility an opportunity to earn a return as follows:

A public utility is entitled to such rates as will permit it to earn a return on the value of the property which it employs for the convenience of the public equal to that generally being made at the same time and in the same general part of the country on investments in other business undertakings which are attended by corresponding risks and uncertainties; but it has no constitutional right to profits such as are realized or anticipated in highly profitable enterprises or speculative ventures. The return should be reasonably sufficient to assure confidence in the financial soundness of the utility and should be adequate, under efficient and economical management, to maintain and support its credit and enable it to raise the money necessary for the proper discharge of its public duties. A rate of return may be reasonable at one time and become too high or too low by changes affecting opportunities for investment, the money market and business conditions generally. [emphasis added.]

In 1944, the Supreme Court provided the following additional guidance:

[I]t is important that there be enough revenue not only for operating expenses but also for the capital costs of the business. These include service on the debt and dividends on the stock. [Citation omitted.] By that standard the return to the equity owner should be commensurate with returns on investments in other

Page 333

enterprises having corresponding risks. That return, moreover, should be sufficient to assure confidence in the financial integrity of the enterprise, so as to maintain its credit and to attract capital.

Citations omitted.]

Federal Power Commission v. Hope Nat. Gas Co., 320 U.S. 591, 603, 51 PUR NS 193, 200, 201, 88 L.Ed. 333, 64 S.Ct. 281 (1944)

hereinafter cited as Hope].

Case law since Hope and Bluefield has expounded on a commission's authority to balance the interests of investors and consumers in setting rates. See e.g.: Re Area Rate Proceeding for Permian Basin, 390 U.S. 747, 770, 75 PUR3d 257, 20 L.Ed. 312, 88 S.Ct. 1344 (1968). In a 1985

Pennsylvania case, the Pa. Supreme Court held that the Hope decision and its progeny do not require setting rates at a level that guarantees the continued financial integrity of the utility concerned. Pennsylvania Electric Co. v. Pennsylvania Pub. Utility Commission, —Pa.—, 502 A.2d 130, 133, 134 (1985). In 1986, the U.S. Supreme Court dismissed this case for want of a substantial federal question. Metropolitan Edison Co. v. Pennsylvania Pub. Utility Commission, —U.S.—, 90 L.Ed.2d 687, 196 S.Ct. 2239 (1986). The Commission notes that this Supreme Court action has precedential value and should not be mistaken for the denial of certiorari which has no precedential value. See: Hicks v. Miranda, 422 U.S. 332, 344, 345, 45 L.Ed.2d 223, 95 S.Ct. 2281 (1975).

In February, 1987 the U.S. Supreme Court provided its most recent precedent in this area. Federal Communications Commission v. Florida Power Corp., 480 U.S.—, 81 PUR4th 613, 94 L.Ed.2d 282, 107 S.Ct. 1107 (1987). In that case, the Court was considering the reasonableness of rates provided by the FCC for cable TV pole attachments. In its decision, the Court quoted from the Permian Basin Area Rate Cases, supra, stating that "regulation of maximum rates or prices `may, consistently with the Constitution, limit stringently the return on recovered investment, for investors' interests provide only one of the variables in the constitutional calculus of reasonableness.'" Id., 81 PUR4th at 618, 107 S.Ct. 1113.

C. Commission Analysis

[3] It is clear that Bluefield and its progeny do not limit this Commission to a certain maximum level of rate of return. Instead, Bluefield and its progeny address the return that the Commission must provide to comply with constitutional mandates. The Commission did not intend by its language in its June 29, 1987 Report and Order to adopt the Staff witness position that the Bluefield standard provides a maximum limit on this Commission's authority to provide a rate of return. Instead, the Commission intended to indicate that regardless of the Staff witness view of the Bluefield standard, a risk premium was appropriate to add to the 11.94% return on equity that the Staff recommended for PSNH.

To further clarify and elaborate on our June 29, 1987 Report and Order, the Bluefield standard provides the basic principles which guided this Commission in setting a rate of return on equity. Under the Bluefield standard, the Company is generally required to receive a return that is commensurate with that of businesses with corresponding risks and that assures confidence in the financial soundness of the utility. However, the standard is limited in that the Company has no right to profits such as are realized in highly profitable enterprises or speculative ventures. The standard also indicates that Commission must also balance between the interests of shareholders and investors.

The Commission finds that the 19 percent return on equity is one reasonable measure compensating the investor for all risks inherent in PSNH. The Commission further finds that the 19 percent return on equity is a level of return that is generally out of line with a utility type of business and is the type of return of a highly profitable enterprise or speculative venture.

The Commission also finds that there is a lack of confidence in PSNH's financial integrity. However, this lack of confidence primarily stems from the interaction of PSNH's large investment in the Seabrook Nuclear Power Plant, the uncertainty of the operation of that plant due to NRC regulation, and the inability of PSNH to recover any part of the Seabrook investment in rates until that plant is in operation due to the operation of RSA 378:30-a. The record reflects that the PSNH investment in Seabrook is over four times the PSNH rate base. The uncertainty over this overwhelming component of PSNH's investment which is not under this Commission's control is the primary factor in PSNH's financial situation. Thus, the Commission is unable to substantially improve the confidence in PSNH's financial integrity via the setting of a rate of return.

The Commission finds that based on the record as a whole, 15 percent return on equity is a relatively high return to provide to an electric utility in today's market — even for a utility constructing a nuclear plant.[2](81) It is also significantly less than the 19 percent level discussed above. However, based on the methodology discussed in the June 29, 1987, the record as a whole and this Commission's expertise in this area, the Commission finds that 15 percent is a reasonable return. That return recognizes the high risks faced by investors, but limits that recognition to some extent to reflect the interests of ratepayers.[3](82)

V. NORMALIZATION VS. FLOW THROUGH OF TAX BENEFITS RELATED TO PRE1971 ASSETS

[4] In the June 29, 1987 Report and Order, the Commission provided for continued "flow-through" treatment of tax versus book timing differences related to plant additions made prior to 1971. PSNH asserts that N.H. Admin. Rules Puc 307.04 (Rule 307.04) requires this Commission provide "normalization" treatment of this item. PSNH asserts that the Commission also improperly relied on Order Nos. 9868 and 9896, rather than the subsequently adopted rule 307.04. In the discussion below, the Commission elaborates on this issue and reaffirms its position thereon.

This issue arises because of differences between the tax treatment versus the book (i.e. financial accounting) treatment of an asset. In this particular issue, the Company is allowed to depreciate the pre-1971 assets more rapidly than it depreciates the assets for book purposes. This faster or "accelerated" depreciation is generally considered a tax benefit. Such accelerated depreciation results in "deferred taxes". In other words, the Company experiences lower tax liability in the early years of an asset's life and higher taxes in the later years when compared to taxes that would occur using "normal" book depreciation for tax purposes.

This difference in tax versus book treatment creates the flowthrough versus normalization issue in ratemaking. The issue is whether to flow the tax benefit of deferred taxes through to the ratepayer immediately, or to instead "normalize" taxes. Under normalization, one sets a higher hypothetical tax expense for ratemaking based upon use of the book depreciation rate. Thus, when viewing one asset in isolation, normalization requires the ratepayers to prepay the

company's tax liabilities in early years and the company has the use of that money until the tax liability accrues in later years. Since the company has interest free use of that ratepayer money during the period of the tax deferral, normalization also generally involves a deduction from rate base equal to this prepayment of deferred taxes. This adjustment to rate base is to make sure that ratepayers do not pay a cost related to the portion of rate base that is supported by the cost free capital that they provided due to normalization.

The Commission has provided flow through treatment to the pre-1971 assets at issue here in previous rate cases. For these particular assets as a whole, book depreciation is currently above tax depreciation. Under normalization treatment, the tax expense for ratemaking would be at a some

Page 335

what higher level rate for the remaining life of the assets.

Puc Rule 307.04 reads as follows: "All accounting records required by said commission shall follow the uniform classification of accounts of the Federal Energy Regulatory Commission." This rule does not address ratemaking treatment. It only addresses how the Company is required to maintain accounting records.

Both PSNH witness Wiggett and Staff witness Sullivan testified that the Commission has the discretion to provide normalization or flow through of this item. The Commission finds their testimony accurate. The Commission reaffirms its decision in its initial order to accept its Staff position as providing the most reasonable ratemaking treatment.

The Commission believes that its rule 307.04 clearly adopts FERC standards for accounting and recordkeeping. The rule does not, and the Commission does not, adopt all FERC ratemaking treatment applied to such records, or any other evidence that is relevant to ratemaking treatment. To the extent that the June 29, 1987 Report and Order refers to a 1970 order on accounting standards, the Commission agrees with PSNH in that rule 307.04 governs Commission accounting standards. However, this clarification does not change the decision on ratemaking, for the rule does not address ratemaking.

Furthermore, the Federal Energy Regulatory Commission (FERC) rule on accounting treatment that addresses normalization versus flow through (and that this Commission adopted under Puc Rule 307.04) states the following:

> Should the utility be subject to more than one agency having rate jurisdiction, its accounts shall appropriately reflect the ratemaking treatment (deferral or flow through) of each jurisdiction.

FERC Statutes and Regulations, 15,029 § 18.C; 18 CFR Part 101 subsection 18. C. (page 321) (1987). This rule specifically anticipates and provides for the potentially different ratemaking treatment of the flow through versus normalization issue in multijurisdiction utilities

like PSNH. Thus, the FERC rules on accounting that the Commission has adopted clearly do not restrict this Commission from providing flow through treatment of deferred taxes related to pre-1971 assets.

VI. DEFERRED TAXES

[5] In the June 29, 1987 Report and Order, the Commission rejected PSNH's proposed pro forma adjustment to rate base to reflect different accruals of deferred taxes that will occur under the new tax rates set by the Tax Reform Act of 1986. According to PSNH, this adjustment would provide a necessary match of rate base to the new lower tax expense and the lower tax benefits that the Company receives due to the Tax Reform Act of 1986. The Commission finds this argument unconvincing.

The Commission set tax expense in its Report and Order based upon its consideration of the lower tax rates of the Tax Reform Act of 1986. Due to the lower tax rate, the tax deferrals (the tax benefit) that the Company receives under normalization treatment are lower.[4](83) Thus, the rate of accrual of these deferred taxes is lower. However, unlike the instantaneous changes of the tax rate and the rate of accrual of deferred taxes, the accrual of deferred taxes (which is deducted from rate base) occurs over time. In other words, the day the tax rate changes the entire tax expense change will have occurred. Similarly, on that day the rate of accrual of deferred taxes will have occurred. In contrast, actual changes in the rate base will not occur due to the tax rate change until the passage of time during which taxes deferred at the new rate accrue.

In the June 29, 1987 Report and Order, the Commission used an average rate base balance during the test year, with appropriate adjustments. Similarly, it used revenues from during the test year, with

appropriate adjustments. In many expense areas, it used a test year expense, also with appropriate adjustments. Many expenses were adjusted, like taxes, to account for new information on expenses which are in effect.

In the issue at hand, PSNH suggests that the Commission adjust rate base to reflect accruals that will occur in the future. However, due to the different manner in which the tax rate effects expense issues versus rate base issues (i.e. instantaneous versus over time, respectively), the Commission reasserts that its rejection of the PSNH pro forma adjustment is reasonable.

Our Order will issue accordingly.

SUPPLEMENTAL ORDER

Upon consideration of the foregoing REPORT REGARDING PSNH MOTION FOR REHEARING which is made a part hereof; it is hereby

ORDERED, that the PSNH Motion for Rehearing is denied.

By order of the Public Utilities Commission of New Hampshire this thirtieth day of July, 1987.

FOOTNOTES

[1]The sentence to be stricken reads as follows: "Staff, using the accounting based embedded methodology as adopted by the Commission in DR 77-49, Re Public Service Co. of New Hampshire, obtains results of 13.28% on preferred stock and 15.28% on long term debt."

[2]The PSNH Motion for Rehearing refers the Commission to rates of return "much higher" being earned by "non-speculative" utilities. The Commission agrees that the schedules PSNH cites show some utilities earning a return on equity above 15%. The existence of such returns does not support the position that a Commission would or should provide a return to those companies at that level if the commission were considering rates for them today.

[3]The Commission notes that no party introduced evidence in this docket with regard to economic or efficient management of PSNH. This situation may have resulted, from the parties anticipation of exhaustive review of PSNH's prudence in future Commission proceedings regarding the rate impacts of the Seabrook I plant.

[4]In its June 29, 1987 Report and Order, the Commission continued normalization treatment to tax timing differences associated with post-1970 plant.

==========

NH.PUC*07/31/87*[60304]*72 NH PUC 337*Public Service Company of New Hampshire

[Go to End of 60304]

72 NH PUC 337

Re Public Service Company of New Hampshire

DR 87-145
Order No. 18,776

New Hampshire Public Utilities Commission

July 31, 1987

PETITION for approval of a short-term interruptible electric service; granted.

SERVICE, § 324 — Electric — Interruptible service — Short-term service — Factors.

[N.H.] Because of an anticipated shortage of electric generating capacity in New England during the summer months, an electric utility was authorized to institute a selective interruptible service, available to no more than ten transmission general service customers for no longer than 40 hours a month and eight hours a day; the special interruptible service would be in effect for only two months, as a stopgap means of responding to the expected short-term capacity deficiencies.

By the COMMISSION:

REPORT

I. PROCEDURAL HISTORY

On July 27, 1987 Public Service Company of New Hampshire (PSNH) filed with this Commission Supplement No. 2 (Interruptible Service Rate I) to Tariff NHPUC No. 31 for the purpose of establishing a short-term voluntary interruptible rate. On July 30, 1987 PSNH filed an amendment to its original filing.

The interruptible rate program will be offered to a limited number of customers belonging to the Transmission General Service (TR) rate class and will be available only during the months of August and September, 1987. PSNH met with the Commission Staff and the Consumer Advocate

on July 24, 1987, to discuss the proposed rate. PSNH stated that the proposal is a direct result of a policy initiative by the New England Power Pool (NEPOOL) Executive Committee in response to expected capacity deficiencies on the New England electric system this summer.

The primary purpose of the interruptible rate is to free-up PSNH generating capacity by providing selected large customers with incentives to reduce demand when requested and thereby earn credit on the demand portion of their electric bills. The timing of the load interruption requests will be controlled by NEPOOL system operators and will correspond with periods of pressure on pool-wide capacity as opposed to PSNH capacity. However, no participant in the program will be required to interrupt load for more than 40 hours during any month and 8 hours during any day. A credit of $1.83 per KW of interrupted load per month (corresponding to $22 per KW per year) will be paid by NEPOOL to PSNH who will pass it directly to the interrupted customer. PSNH also represents that the program will not materially

impact its revenue and therefore non-participating customers will be unaffected.

II. COMMISSION ANALYSIS

Given the expected shortage of generating capacity in New England this summer, as well as the short program duration and minimal revenue impact, the Commission views the proposal favorably. In addition, the Commission considers this an opportunity to assess the potential for load management in PSNH's franchise area.

There are, however, two features in the program which, but for the capacity shortage in New England, would require further investigation prior to our approval.

The first relates to limiting the availability of the interruptible rate to no more than ten TR customers. Both the limitation to ten customers, and the method of selecting the ten customers raise issues that have not been fully developed.

Our second concern relates to the $22 per KW per year credit which underpins the proposed program. The construction of interruptible rates or contracts should reflect the nature of the capacity costs saved and therefore should be accompanied by an analysis of the underlying costs. For example, if load is reduced at the time of system peak then it should be credited with the full value of marginal capacity cost; however, whether the utility would request load reductions during periods of capacity surplus is another question. In order to maximize efficient resource allocation, the marginal capacity costs should be attributed only to the time periods which experience capacity shortage. In this instance, PSNH has provided no evidence supporting the $22 per KW credit.

In view of the urgency surrounding implementation of the proposal, the Commission will allow the rate to become effective as requested on August 1, 1987. On completion of the program, PSNH is to submit a detailed report to the Commission which will address, but not necessarily be limited to, information on:

(1) Customer compliance with respect to the commitment to interrupt;

(2) revenue impacts (if any);

(3) program administration costs.

Our Order will issue accordingly.

ORDER

Based upon the foregoing Report which is made a part hereof; it is hereby

ORDERED, that Supplement No. 2 to Tariff NHPUC-31, Interruptible Service Rate I be, and hereby is, approved; and it is

FURTHER ORDERED, that Public Service Company of New Hampshire file a detailed report on the interruptible rate program by October 30, 1987; and it is

By order of the Public Utilities Commission of New Hampshire this thirty-first day of July, 1987.

==========

NH.PUC*07/31/87*[60305]*72 NH PUC 339*JHP Partnership

[Go to End of 60305]

72 NH PUC 339

Re JHP Partnership

DE 87-136
Order No. 18,777

New Hampshire Public Utilities Commission

July 31, 1987

ORDER initiating an investigation into the provision of cellular mobile telephone service.

SERVICE, § 451.2 — Telephone — Cellular mobile service — Investigation docket.

[N.H.] The commission opened a docket to investigate the need for and public interest in a wireline cellular mobile telephone service proposed to be offered in the state by a foreign partnership already holding requisite federal permit rights.

By the COMMISSION:

ORDER

WHEREAS, on July 15, 1987 JHP Partnership, a California partnership to be registered as a foreign partnership in New Hampshire (the partners being Robert H. Pelissier, Jalal Hashtroud and United States Cellular Corporation of New Hampshire) applied pursuant to N.H. Rev. Stat. Ann. §374:22 (1984) for a finding that the Commission has no jurisdiction over JHP's proposal to provide a cellular mobile radio telephone communication system or in the alternative for permission to commence business as a public utility; and

WHEREAS, petitioner holds a construction permit from the Federal Communications Commission (FCC) issued October 27, 1986 for the construction of a cellular mobile radio telecommunications system for the Manchester-Nashua, New Hampshire New England County Metropolitan Area (NECMA) (as more particularly described in the petition) and the proposed service area for this service is the area covered by the construction permit; and

WHEREAS, the service which the petitioner proposes to provide is wireline cellular mobile telephone service which operates by radio transmission, the FCC having determined that there is a public need for the service, Re Inquiry into the Use of Bands 825-845 MHz and 870-890 MHz for Cellular Communications Systems, Opinion and Order, 86 F.C.C. 2d 469, 89 F.C.C.2d 58; codified at 47 C.F.R. 22.900 et seq.; and

WHEREAS, a prehearing conference has been scheduled before the Commission at its office in Concord, New Hampshire, 8 Old Suncook Road, Building #1, at 9:00 a.m. in the forenoon on the eleventh day of August, 1987 be held pursuant to N.H. Admin. Code PUC §203.05 and N.H. Rev. Stat. Ann §541-A:16 V (b) to open a generic proceeding (Phase I of Portsmouth Cellular Limited Partnership: Petition to Commence Business as a Public Utility, Docket DE 87-126) to consider whether the Commission has authority to regulate cellular service; it is hereby

ORDERED, that Docket DE 87-136 entitled In Re Petition of JHP Partnership: Application for Permission and Approval to Furnish Cellular Mobile Telephone Service in the Manchester-Nashua NECMA, shall be opened for the investigation of whether the engaging in business or exercise of right, privilege, or franchise of JHP Partnership to construct and operate a cellular mobile telephone system in the State of New Hampshire is in the public good pursuant to N.H. Rev. Stat. Ann. §374:26 (1984); and it is

FURTHER ORDERED, that JHP Partnership shall be a mandatory party in Phase I of Portsmouth Cellular Limited Partnership: Petition to Commence Business as a Public Utility; and it is

FURTHER ORDERED, that any decision on the merits of JHP Partnership's application will be deferred until such time as a decision on Phase I of the Portsmouth Cellular docket is issued.

By Order of the Public Utilities Commission of New Hampshire this thirty-first day of July, 1987.

==========

NH.PUC*08/04/87*[60306]*72 NH PUC 340*Manchester Water Works

[Go to End of 60306]

72 NH PUC 340

Re Manchester Water Works

DR 87-2
Supplemental Order No. 18,781

New Hampshire Public Utilities Commission

August 4, 1987

APPLICATION by municipal water utility for approval of revised tariffs; granted as modified.

---

1. RATES, § 256 — Schedules and formalities — Tariff revisions — Interpretation — Unclear language.

[N.H.] Where proposed selective word changes in a utility's tariffs, intended as a means of clarifying the tariffs, actually serve only to confuse the issue and make the tariffs ambiguous in other senses, the changes will not be allowed, and it will be recommended that the utility review its entire tariff rather than take a "bandaid" approach to word changes; where proposed word changes actually alter the meaning of the tariff, as in substituting mandatory language ("shall") for permissive language ("may"), the changes cannot be allowed without careful review and hearing. p. 341.

2. RATES, § 143 — Factors affecting reasonableness — Cost of service — Creation of differentials.

[N.H.] Where a municipal water utility proposed a consolidated comprehensive approach to rate design for its miscellaneous service charges, based on cost-of-service pricing, the commission commended its intentions, but noted that where cost-of-service pricing would result in excessive sharp rate increases and in undue differentials between new and existing customers and between in-town and out-of-town customers, strict monitoring of costs and further revisions might be necessary. p. 342.

3. PAYMENT, § 53 — Methods of enforcement — Penalties — Bad check charge.

[N.H.] Invoking its authority to amend a rule that limits bad check charges to $5 or 5 percent of the value of the check, whichever is greater, the commission allowed a water utility to revise its tariff to provide for a $10 bad check penalty. p. 343.

APPEARANCES: Richard Samuels, Esquire, representing Manchester Water Works; Martin C. Rothfelder, Esquire, representing the Public Utilities Commission and the Commission Staff.

By the COMMISSION:

Report

I PROCEDURAL HISTORY

On January 13, 1987 Manchester Water Works filed the following revisions to its current tariff:

NH PUC No. 3 Water

Fourth Revision — Page 5 NH PUC No. 3 Water

Third Revision — Page 19 NH PUC No. 3 Water

Third Revision — Page 20 NH PUC No. 3 Water

Sixth Revision — Page 26 NH PUC No. 3 Water

Sixth Revision — Page 27 NH PUC No. 3 Water

Seventh Revision — Page 28 NH PUC No. 3 Water

Eighth Revision — Page 28A NH PUC No. 3 Water

Seventh Revision — Page 29 NH PUC No. 3 Water

Seventh Revision — Page 30 NH PUC No. 3 Water

Original Page 30A

On February 26, 1987 the filing was amended to include "NH PUC No. 3 Water, Eighth Revision — Page 22."

On March 9, 1987, Order No. 18,588 was issued suspending the revisions to the tariff, scheduling a prehearing conference for April 14, 1987 and requiring notification of all persons desiring to be heard. An

affidavit of publication on March 20, 1987 was received on March 25, 1987.

At the prehearing conference a procedural schedule was established and a hearing set for June 17, 1987. No one appeared at the conference in opposition to the petition.

The hearing was held as scheduled. Witnesses Thomas Bowen and Gilbert Moniz provided testimony for the company. No other testimony was offered.

II COMMISSION FINDINGS

Manchester Water Works has proposed tariff revisions which fall into three categories:

(1) Language changes to clarify meaning and intent of the tariff.

(2) Increases or changes to miscellaneous charges where no specific PUC rule applies.

(3) Increases or changes to miscellaneous charges where a specific PUC rule does apply.

These categories will be considered individually.

A — Language Changes —

[1] MWW has proposed new wording of article 1, C. (3) which is understood to be a clarification with no intent to change the meaning of the tariff. The prior wording of this paragraph said in part "buildings ... may be serviced by a single service or multiple services and considered as one customer unit". The proposed wording states "shall be considered". The change from "may" to "shall" imparts different meaning. Interpretation of the new sentence caused confusion during the hearing (transcript pages 18 — 28). In the absence of a clearly phrased statement having a new intent, it is not acceptable to change the meaning of a tariff merely through unclear wording. Therefore, while we can accept the intended clarification, we can only do so if the word "may" continues to be used. Acceptable wording is: "A separate building having more than one water meter may be considered as one customer unit."

The company has proposed addition of a new sentence in article 24, F. (1) to establish a minimum main extension charge based on 75% of the total installed length of pipe. Based on company testimony (transcript page 28 thru 32) the new sentence is intended to cover situations which arise at corner lots where the length of pipe may exceed the front footage. The proposed minimum is accepted as reasonable. However, the applicability of the added sentence should be clarified. Acceptable wording is: "For corner lots, the petitioner's share of the extension shall be based on a minimum of 75% of the total footage of piping required."

The company has proposed to modify article 24, F. (3) to extend the time of final acceptance for developer installed mains from two (2) to two and one-half (2 1/2) years. The change has been justified on the basis of consistency with the terms of permits as now being written for work within Manchester and on state highway lands outside of Manchester (transcript page 33). We find this change to be reasonable and accept the change as proposed.

The company has proposed to simplify the wording of tariff page 26 for private fire protection service. The change deletes reference to the exclusion for pipe size changes within 40 pipe diameters of the property. The company witness testified that this situation has not occurred in his experience at the department. We find this change to be reasonable and accept the deletion as proposed.

In two of the four accepted wording changes we have found that the change itself required different wording to avoid confusion over its intent. We believe this difficulty arises because of the use of a "bandaid" approach to updating the tariff. To the extent the wording of the tariff causes confusion or uncertainty the objective of defining the basis for utility charges is compromised. Therefore we believe it

would be appropriate for Manchester Water Works to review their entire tariff with the objective of re-writing any article which is found to cause potential confusion to the public, this commission or employees of the company.

B — Changes to miscellaneous charges — no PUC rule

In the February 26, 1987 amendment of their petition, MWW proposed an increase to the front foot charge for main extensions. The new cost was calculated on the same basis as the previous cost except that more recent data on actual cost for 1986 extensions was employed. Implicit in the calculation of the charge are the definitions of front footage and the total footage subject to reimbursement. The new minimum footage responsibility proposed in article 24, F. (1) is expected to increase the total footage responsibility of new customers and hence this should reduce the per foot cost. We will require that future changes to the per foot cost employ a methodology which takes into account the total footage responsibility for which the company receives reimbursement rather than front footage. For the present we will accept the use of historical data from 1986 and approve the proposed front foot charge of $11.26 per foot.

All of the remaining changes to miscellaneous charges are tabulated in exhibit 3 of the record along with their revenue impacts. Of these charges only the bad check processing charge (tariff page 28 item 8) is explicitly covered in rules of the PUC. Therefore with that exception the changes will be discussed in aggregate here. The bad check processing charge is discussed in a later section of this report.

[2] The Commission generally looks favorably on use of cost based methods for defining customer charges. Therefore we concur with the general approach of MWW in developing a comprehensive rate schedule for miscellaneous service charges. When miscellaneous charges represent modest dollar amounts and appear reasonable and equitable, the Commission can accept such rate schedules based on the company analysis and our limited investigation. This approach is reasonable because any inadvertent inaccuracies in the charges will tend to be balanced by subsequent adjustment of the revenue requirements of the company as developed in later rate cases.

However, when the miscellaneous charges increase significantly, appear to be potentially above a reasonable level or may be inequitably applied to various customers it is necessary that the Commission monitor the actual cost of these services more closely. In the proposed revisions to miscellaneous charges, increases as large as several hundred percent have been proposed, certainly a significant increase. Furthermore, fees for processing of various applications and payments approach or exceed $100; this is potentially above a reasonable level. Finally, the nature of many of the increased charges is to impose major costs on new customers which may not have been paid by previous and current customers. Furthermore special services required by existing customers such as billing questions or service complaints are not segregated by cost.

We additionally note that minimum charges have been proposed for several services which had been billed to all customer at cost. The justification for the imposition of a minimum charge was that experience has shown that costs are above the minimum anyway (transcript page 47). However, we observe that cost must be calculated to determine if the minimum is exceeded. Therefore actual cost data is available for each occurrence and could be used if necessary.

In summary, we have reason for concern about the direction being taken by the miscellaneous service charges of MWW. While we will not at this time reject the proposed changes due to the relatively small amount of money involved we will require that MWW maintain records of actual costs for each of these charges and report them after collecting one year of data. These records should include actual expenditures of time and materials for each of the

charges described in the petition. While this Commission is primarily concerned about the "out of city" customers under our jurisdiction, we will accept data for all customers as representative if the company finds it more efficient to record all occurrences.

C — Miscellaneous charges subject to PUC rule —

[3] MWW has proposed to increase the charge for processing bad checks from $5.00 to $l0.00. PUC rule 603.09 allows a penalty equal to the greater of $5.00 or 5% of the face value of the check. MWW is also governed by RSA 80:56 which established a single amount of $10.00.

Under rule PUC 601.01 (b) the Commission has authority to modify the provisions of the referenced rule 603.09. In the interest of consistency and equity we will exercise this authority and approve the proposed change from $5.00 to $10.00.

III CONCLUSIONS

Our analysis of the petition of Manchester Water Works has led to the conclusion that each of the proposed changes will be approved, subject, however, to the additional reporting requirements described herein. Our determination has been significantly influenced by considerations of uniformity among customers within the city and outside the city and by the rather small overall revenue impact of the changes. However, we are concerned about the possibility that individual new customers will experience excessive charges when applying for service. This concern is amplified by the unique source development charge which must be paid by these same customers. As more data becomes available after one year of the revised charges, we expect to analyze this issue in more detail and may find it necessary that tariffs for "out of city" customers be reviewed further.

Our order will issue accordingly.

SUPPLEMENTAL ORDER

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

ORDERED, that the following revisions to NH PUC No. 3, Manchester Water Works are approved:

Third revised page 20,

superseding second revised page 20 Sixth revised page 26,

superseding fifth revised page 26 Sixth revised page 27,

superseding fifth revised page 27 Seventh revised page 28,

superseding sixth revised page 28 Eighth revised page 28A,

superseding seventh revised page 28A Seventh revised page 29,

superseding sixth revised page 29 Seventh revised page 30,

superseding sixth revised page 30 Original page 30A

and it is

FURTHER ORDERED, that the following revisions to NH PUC No. 3, Manchester Water Works are rejected:

Fourth revised page 5,

superseding third revised page 5 Third revised page 19,

superseding second revised page 19

and it is

FURTHER ORDERED, that Manchester Water Works prepare newly revised copies of pages 5 and 19 reflecting the approved working changes given in the report; and it is

FURTHER ORDERED, that a complete compliance filing of all revised pages be submitted to this Commission; and it is

FURTHER ORDERED, that Manchester Water Works record actual costs associated with the revised miscellaneous charges for a period of one year beginning on the effective date of this order as described in the report and report to this Commission on the actual costs and receipts from each category of revised miscellaneous charges for the one year period.

By order of the Public Utilities Commission of New Hampshire, this fourth day of August, 1987.

72 NH PUC 344

Re Public Service Company of New Hampshire

DE 87-131
Order No. 18,782

New Hampshire Public Utilities Commission

August 4, 1987

ORDER nisi authorizing an electric utility to maintain and operate electric lines across public waters.

ELECTRICITY, § 7 — Authorization for transmission lines — Existing unlicensed lines — Public comment.

[N.H.] An electric utility was conditionally authorized to maintain and operate electric lines across public waters; the public was invited to comment on a petition for after-the-fact licenses for certain existing transmission and distribution lines that cross public waters.

By the COMMISSION:

ORDER

WHEREAS, on July 2, 1987, Public Service Company of New Hampshire filed with this Commission, a petition pursuant to RSA 371:17-20 to license 31 existing electric transmission and distribution lines over and across certain public waters in the State of New Hampshire; and

WHEREAS, in order to meet the requirements of service to the public, the petitioner must maintain electric transmission and distribution lines over and across certain public waters, which lines are an integral part of its electric system; and

WHEREAS, in order to discharge its obligations to the public to provide safe electric service, the petitioner has reviewed its installations of lines across public waters; and

WHEREAS, the review has disclosed instances where crossings have not been initially licensed; and

WHEREAS, the location, construction and design of the crossings the petitioner is seeking to license are specifically identified in the petition; and

WHEREAS, the definition of "Public Waters" contained in the limited purposes of RSA 371:17 includes "all ponds of more than ten acres, tidewater bodies, and such streams or portions thereof as the Commission may prescribe"; and

WHEREAS, the Commission prescribes these subject crossings to be over and across public waters; and

WHEREAS, the Commission finds such water crossings necessary for the petitioner to meet its obligation to serve customers within its authorized franchise area, thus it is in the public interest; and

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

ORDERED, that all persons interested in responding to this petition be notified that they may submit their comments or file a written request for a hearing on the matter before this Commission no later than August 19, 1987; and it is

FURTHER ORDERED, that the petitioner effect said notification by publication of this order once in The Union Leader. Such publication to be no later than August 12, 1987 and designated in affidavits to be made on a copy of this order filed with this office; and it is

FURTHER ORDERED, NISI that authority be granted, pursuant to RSA 371:17 et seq, to the Public Service Company of New Hampshire to maintain and operate transmission and distribution lines over and across public waters of the State of New Hampshire at the following locations which have been described in this docket:

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

TOWN TOPO EXHIBIT PLAN #

Antrim 1A1 1A2 343
Barrington 2A1 2A2 344
Conway 3A1 3A2 345
 4A1 4A2 346
 5A1 5A2 347

6A1 6A2 348
Conway (Cont.)
Francestown 7A1 7A2 349
  7A3 350
Franklin 8A1 8A2 351
  8A3 352
  8A4 353
Gilford 9A1 9A2 354
Harrisville 10A1 10A2 355
Madison 11A1 11A2 356
Ossipee 12A1 12A2 357
 13A1 13A2 359
 14A1 14A2 360
Rindge 15A1 15A2 361


```
 16A1 16A2 362
 17A1 17A2 363
Stoddard 18A1 18A2 364
  18A3 365
Strafford 19A1 19A2 366
Sunapee 20A1 20A2 367
 21A1 21A2 368
Wakefield 22A1 22A2 369
E. Washington 23A1 23A2 370
  23A3 371
 24A1 24A2 372
Weare 25A1 25A2 373
Windham 26A1 26A2 374
```

FURTHER ORDERED, that all construction meet requirements of the National Electrical Safety Code and all other applicable safety standards; and it is

FURTHER ORDERED, that such authority shall be effective 20 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 fourth day of August, 1987.

==========

NH.PUC*08/06/87*[60308]*72 NH PUC 345*Warner Cable Communications, Inc.

[Go to End of 60308]

72 NH PUC 345

Re Warner Cable Communications, Inc.

DE 87-141
Order No. 18,783

New Hampshire Public Utilities Commission

August 6, 1987

ORDER nisi granting a license to a cable television corporation to operate and maintain plant crossing state-owned property.

CERTIFICATES, § 101.1 — Cable television — License to operate and maintain plant across state-owned property.

[N.H.] A cable television corporation was conditionally granted a license to operate and maintain plant with associated lines crossing stateowned property where said license was a renewal of a previously authorized license that had produced no complaints from the public.

By the COMMISSION:

ORDER

WHEREAS, in Docket DE 82-232, Warner Amex Cable Communications, Inc. (now Warner Cable Communications Inc.) and Cheshire Cable Corporation were granted license to construct and maintain antenna facilities with associated pole lines across approximately 2700 feet of Mt. Wantastiquet; and

WHEREAS, said license was a renewal of a previous authorization issued in 1961 (Docket D-E3919), which had been subsequently reassigned and renewed in 1966 (Docket D-E4441); and

WHEREAS, said order approved this lease for five years; and

WHEREAS, no complaints from the public have been noted during the current lease or its predecessors, affirming that said license is in the public interest; and

WHEREAS, the Commission finds that

Page 345

---

the co-license, Cheshire Cable Corporation, was not a party to the instant renewal petition and feels that both Cheshire and the public should be offered the 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 public hearing on the matter before this Commission, no later than August 21, 1987; and it is

FURTHER ORDERED, that Warner Cable Communications, Inc. effect said notice by one-time publication of this order in a newspaper widely read in the affected area no later than August 14, 1987 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 Warner Cable Communications Inc. (successor to Warner Amex Cable Communications, Inc.) and Cheshire Cable Corporation be, and hereby are, authorized pursuant to RSA 371:17 et seq to operate and maintain antenna and associated facilities, including pole lines and attachments thereto, across approximately 2700 feet Mt. Wantastiquet, easterly of its summit from a point southerly of Childs Monument, and following a straight line to the so-called Old Mountain Road, just easterly of the Connecticut River; and it is

FURTHER ORDERED, that such use of this State land is subject to annual fees of $500.00 for Warner Cable Communications, Inc. and $50.00 for Cheshire Cable Corporation, said payments to be made to the State Treasurer for the Forest Improvement Fund according to RSA 371:23; and it is

FURTHER ORDERED, that such authority shall be effective 20 days from the date of this order, unless a hearing is requested as provided herein or the Commission otherwise directs prior to this effective date; and it is

FURTHER ORDERED, that such license be renewed automatically each five years unless either party gives notice of its intent not to renew at least 180 days prior to the end of its term.

By order of the Public Utilities Commission of New Hampshire this sixth day of August, 1987.

==========

[Go to End of 60309]

72 NH PUC 346

Re New Hampshire Electric Cooperative, Inc.

DF 87-105
Order No. 18,787

New Hampshire Public Utilities Commission

August 11, 1987

ORDER authorizing an electric cooperative to borrow funds.

SECURITY ISSUES, § 44 — Factors affecting authorization — Electric cooperative.

[N.H.] An electric cooperative was authorized to borrow funds from the United States government and from the National Rural Utilities Cooperative Finance Corporation for the purpose of extending service to new members and maintaining and improving distribution and transmission plant; it was found that (1) the purpose of the borrowing was consistent with the cooperative's obligation to provide safe and reliable service, (2) the work plan was economically justified when measured against adequate alternatives, and (3) the rates resulting from the financing would provide service to the cooperative's customers at a reasonable rate while allowing the cooperative 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

Page 346

On June 8, 1987, 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 $26,516,000.00 for the purpose of extending service to new members and maintaining and improving distribution and transmission

plant.

As of the 30th day of April, 1987, the ownership of the Cooperative was represented by approximately 52,000 memberships. Its entire long-term 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)
   41 Notes in the Face Amount of $  77,625,179
   Less Unadvanced Funds at 4/30/87 611,000
   Net Amount Borrowed $  77,014,179
   Repayment to Date Applicable to
   said Notes
   Accrued and Deferred Interest $  18,772,423
   (Not Due) 32,904
   Net Long Term Debt 4/30/87 $  58,274,660

 B. Long Term Debt to REA and FFB
   (Seabrook)
   2 Notes in the Face Amount of $186,750,000
   Less Unit 2 Rescission 40,068,000
   Less Unadvanced Funds at 4/30/87 14,973,501
   Less Funds Under Stop Order 7,061,499
   Net Amount Borrowed $124,647,000
   Repayment to Date Applicable to
   Said Notes 3,622
   Net Long Term Debt 4/30/87 $124,643,378

 C. Long Term Debt to National Rural
   Utilities Cooperative Finance
   Corporation
   3 Notes in Face Amount of $  6,354,224
   Net Amount Borrowed $  6,354,223
   Repayment to Date Applicable
   to Said Notes 89,313
   Net Long Term Debt 4/30/87 $  6,264,411

 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 169,724
   Net Long Term Debt 4/30/87 $    130,276
```

There are no short term notes outstanding.

Of the $26,516,000.00 which the Coop has sought authorization to borrow, $23,765,000 of this amount would be borrowed

Page 347

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 $2,751,000, 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 rates for CFC borrowings was 9.0% for

a fixed rate and 8% for a variable rate. The anticipated composite cost of financing will be approximately 5.4% per annum, depending on the applicable rate available.

There is a possibility that the REA will require the Coop to borrow 30% of the requested funding from CFC (instead of 10% as reflected above). This would result in a composite weighted average interest rate of 6.2%. The Coop requests the flexibility to borrow on either a 90%/10% or a 70%/30% basis.

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 of $26,516,000. 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 and for such additional purposes as referred to in the Cooperative's petition.

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 $26,516,000.00 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 $26,516,000.00 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 by one or more notes, and in such proportions as between REA and CFC (i.e. 90/100 or 70/30) as the Coop may determine to be in its best interests, at various dates and amounts not to exceed the total authorized borrowing of $26,516,000.00, all as said loan funds may become available from the Untied States Government through the Rural Electrification Administration, the National Rural Utilities Cooperative Finance Corporation, or any REA approved lending agency or subdivision thereof; and it is

FURTHER ORDERED, that the proceeds from the issuance of said note or notes be used by the New Hampshire Electric Cooperative, Inc. in accordance with its work plan as presented for extensions of service to new members, for ongoing improvements and replacements of distribution and transmission plant, for such purposes as set forth in its petition to reimburse its treasury for monies previously expended, if any, for such improvements, additions and extensions under the construction work plan submitted.

By order of the Public Utilities Commission of New Hampshire this eleventh day of August, 1987.

FOOTNOTES

*Commissioner Linda Bisson did not participate in this proceeding.

==========

[Go to End of 60310]

72 NH PUC 349

Re Public Service Company of New Hampshire

DR 87-151
Order No. 18,788

New Hampshire Public Utilities Commission

August 11, 1987

ORDER transferring to the New Hampshire Supreme Court questions of law concerning the inclusion of construction work in progress in rate base.

VALUATION, § 224 — Construction work in progress — Rate base treatment — Electric utility.

[N.H.] The commission transferred to the New Hampshire Supreme Court questions of law concerning whether the constitutional rights of an electric utility, in circumstances where failure to include construction work in progress in rate base would threaten the financial integrity of the utility, may allow or require the inclusion of CWIP in rate base regardless of state statute RSA 378:30-a, which specifically prohibits the inclusion of CWIP in rate base.

By the COMMISSION:

Report Regarding Request for Transfer

On August 5, 1987 Public Service Company of New Hampshire (PSNH) filed an APPLICATION TO ALTER EXISTING RATES ON ACCOUNT OF EMERGENCY CIRCUMSTANCES (the Application). Along with its application, PSNH has requested that the Commission reserve, certify and transfer to the New Hampshire Supreme Court the controlling question of law, pursuant to RSA 365:20. This Report, the Order attached hereto, and the attached INTERLOCUTORY TRANSFER WITHOUT RULING grants the PSNH request for transfer but adds a second question of law to clarify the PSNH question.

Page 349

The Commission recently concluded consideration of PSNH rates under New Hampshire Statutes in DR 86-122. In that Order the Commission made the following finding regarding PSNH's financial integrity and the operation of RSA 378:30-a:

The Commission also finds that, there is a lack of confidence in PSNH's financial integrity. However, this lack of confidence primarily, stems from the interaction of PSNH's large investment in the Seabrook Nuclear Power Plant, the uncertainty of the operation of that plant due to NRC regulation, and the inability of PSNH to recover any part of the Seabrook investment in rates until that plant is in operation due to the operation of RSA 378:30-a. The record reflects that the PSNH investment in Seabrook is over four times the PSNH rate base. The uncertainty, over this overwhelming component of PSNH's investment, which is not under this Commission's control is the primary factor in PSNH's financial situation. Thus, the Commission is unable to substantially improve the confidence in PSNH's financial integrity via the setting of a rate of return.

Docket DR 86-122, Re Public Service Co. of New Hampshire, Report Regarding PSNH Motion for Rehearing and Seventeenth Supplemental Order No. 18,775, 9-10 72 NH PUC 330, 335 (1987). The Report and Order disposing of DR 86-122[1(84)] and the Orders disposing of the Motions for Rehearing[2(85)] indicate that PSNH did not request, and the Commission did not consider, placing construction work in progress in rate base as part of the process of developing just and reasonable rates for PSNH in DR 86-122. However, it seems that PSNH has placed this issue before the Commission at this time. Based upon the above quoted finding from docket no. DR 86-122 and the PSNH request, it seems likely that the Commission will need to know

whether the Constitutional rights of PSNH allow or require the inclusion of portions of the PSNH Seabrook investment in rate base, despite the restrictions of RSA 378:30-a.

For these reasons and the reasons expressed in the attached INTERLOCUTORY TRANSFER WITHOUT RULING, the Commission transfers to the New Hampshire Supreme Court the question that PSNH has requested that we transfer. This question is as follows:

Where a public utility alleges that at its currently allowed rates as restricted by RSA 378:30-a,

(1) its cash provided from internal sources is insufficient to meet all requirements of the conduct of its business;

(2) its access to cash from external sources through sale of its securities is so restricted as to be unavailable upon reasonable terms, and

(3) accordingly, its earnings are insufficient to enable it to attract capital or to maintain its credit, or otherwise to support its financial integrity,

Is the public utility entitled to a hearing to establish a level of rates to restore its financial integrity consistent with the interests of customers, notwithstanding RSA 378:30-a, the so-called "anti-CWIP" statute?

The Commission also finds it appropriate to add a question to clarify the PSNH question. The Commission believes the PSNH question, as presented, could be narrowly read to address only PSNH's right to be heard. The Commission would find such information of little help if it did not also include information on PSNH's constitutional rights, if any, to substantive relief that RSA 378:30-a would otherwise prohibit. Thus, the Commission transfers the following additional question.

Does the U.S. Constitution or the N.H.

Page 350

Constitution require or allow the Commission to, when setting rates, include construction work in progress on a construction project in rate base before said construction project is actually providing service to customers, regardless of RSA 378:30-a?

Our Order will issue accordingly.

ORDER

In consideration of the foregoing Report Regarding Request for Transfer and the attached INTERLOCUTORY TRANSFER WITHOUT RULING, which are incorporated herein by reference; it is

ORDERED, that the Commission will reserve, certify and transfer the questions of law listed in the foregoing report via its signing of the INTERLOCUTORY TRANSFER WITHOUT RULING attached hereto to the New Hampshire Supreme Court pursuant to RSA 365:20; and it is

FURTHER ORDERED, that PSNH shall, pursuant to Supreme Court Rule 9, file the appropriate number of copies of the INTERLOCUTORY TRANSFER WITHOUT RULING and

its appendix with the New Hampshire Supreme Court.

By order of the Public Utilities Commission of New Hampshire this eleventh day of August, 1987.

FOOTNOTES

[1]Fourteenth Supplemental Order No. 18,726 (72 NH PUC 237) (June 29, 1987).

[2]Sixteenth Supplemental Order No. 18,774 (72 NH PUC 328) (July 28, 1987) and Seventeenth Supplemental Order No. 18,775 (72 NH PUC 330) (July 30 1987).

==========

NH.PUC*08/13/87*[60851]*71 NH PUC 484*Pinetree Power/Tamworth, Inc.

[Go to End of 60851]

71 NH PUC 484

Re Pinetree Power/Tamworth, Inc.

DR 86-28, Supplemental Order No. 18,368

New Hampshire Public Utilities Commission

August 13, 1987

OPINION and order clarifying the commission's powers with regard to the rendering and modification of decisions.

Orders, § 13 — Parties bound — Vested rights — Nisi orders.

The commission has never reached the conclusion that Nisi orders do not create vested rights in any of the parties involved. [1] p. 486.

Orders, § 10 — Modification — Commission powers.

The commission is empowered to amend, suspend, annul, or otherwise modify any order previously issued by it if, after notice and hearing, there appears to be good cause for such change. [2] p. 487.

By the COMMISSION:

REPORT

On April 17, 1986, the Commission issued Order No. 18,223 (71 NH PUC 249) suspending the requested long term rates applicable to eight small power producers (SPPs), including Pinetree Power - Tamworth, Inc. (Pinetree/ Tamworth).[1(86)] On May 7, 1986, a motion for rehearing of Order No. 18,223 was filed on behalf of Pinetree Power/Tamworth, Inc. in docket

DR 86-28, Franconia Power & Light, Inc. (Franconia) in DR 86-35, Thermo Electron Energy Systems-Troy Project (Thermo Electron) in DR 86-52, Thermo Electron-Conway Project (Thermo Electron-Conway) in DR 86-53, Thermo Electron Energy Systems-Antrim (Thermo

Electron-Antrim) in DR 86-54, Thermo Electron Energy Systems-Campton (Thermo Electron-Campton) in DR 86-55 and Thermo Electron-Fitzwilliam Project (Thermo Electron-Fitzwilliam) in DR 86-56.

On June 4, 1986, the Commission issued Order No. 18,293 (71 NH PUC 345) which, for reasons cited in the Report accompanying said Order, denied the motion for rehearing regarding all movants except for Pinetree/ Tamworth in DR 86-28.

In granting Pinetree/Tamworth's motion the Commission said:

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 proceedings scheduled for Pinetree Power and its associated corporations on July 8, 1986.[2(87)]

The proceedings referred to above regarding the Pinetree Projects are currently ongoing before the Commission.

On June 25, 1986, PSNH filed a motion for rehearing of Order No. 18,293 (Order) relating to Pinetree/Tamworth (DR 86-28). In its motion, PSNH asserted that the Order is unlawful, unjust and unreasonable as it pertains to lifting the suspension of the Pinetree/ Tamworth long term rate order, Order No. 18,112.

I. PSNH MOTION FOR REHEARING

PSNH contends that the Commission erred in concluding that Pinetree Power/ Tamworth could reasonably have relied on the Order NISI despite the Commission's allegedly contrary conclusion in the Order (71 NH PUC at p. 349, Footnote 10) that NISI Orders do not create vested rights.[3(88)] The remaining PSNH assertions argue that Pinetree had no vested rights in prior Commission Orders and did not establish reasonable reliance thereon.[4(89)]

II. PINETREE/TAMWORTH'S POSITION

On June 30, 1986, Pinetree/Tamworth filed an answer to the PSNH motion for rehearing. In summary, Pinetree/ Tamworth asserted in its answer:

1. The Commission reinstated Order No. 18,112 based upon the fact that it is a final Order for which the hearing and appeal periods have passed. Therefore, the PSNH motion should be dismissed.

2. The PSNH motion must be denied because it was submitted significantly past the rehearing period provided for by statute and raises issues barred by PSNH's failure to seek an initial rehearing. Since PSNH did not seek rehearing of Order No. 18,112 during the 20 day period allowed under RSA 541:3, it cannot now challenge the reinstatement of said Order.

3. The PSNH motion seeks to raise issues, such as "vested rights" and "protected property interest", that

Page 485

PSNH was aware of and which could have been raised in the rehearing period subsequent to the effective date of Order No. 18,112. PSNH could have raised these issues during the Order NISI comment period or during the rehearing period for the final Order NISI. PSNH chose not to avail itself of either opportunity and should be barred from raising the issues now.

III. COMMISSION ANALYSIS

The PSNH motion for rehearing was filed with the Commission on June 25, 1986, one day beyond the 20 day period allowed for requesting rehearing under RSA 541:3.[5(90)] The motion could be rejected on this basis alone.

PSNH also misconstrues Order No. 18,293 by asserting, as its only ground for rehearing, that the Commission erred in concluding that Pinetree/ Tamworth could reasonably have relied on the Order NISI despite the Commission's "contrary conclusion in the Order (71 NH PUC at p. 349, Footnote 10) that NISI Orders do not create vested rights ... ."

[1] The language cited by PSNH in its motion for rehearing says (71 NH PUC at p. 349, Footnote 10):

It is ironic that not 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.

This language, contrary to PSNH's assertion, does not constitute a Commission conclusion that NISI Orders do not create vested rights.[6(91)] The comment, which is at most dicta regarding a perceived irony in the applicants' argument refers to the applicants' assertion that certain rights vested in them at the conclusion of the NISI period as opposed to the end of the statutory appeal period. It is not a conclusion as to the legal effect of NISI orders nor does it contradict the Commission's reasons for granting Pinetree/Tamworth's motion for rehearing.

The Commission never reached the question of whether Pinetree/Tamworth, under the particular facts of this case, had reasonably relied on prior Commission Orders or if Pinetree/Tamworth had otherwise acquired "vested rights" which would require reinstatement of their long-term rate order. The Commission, in Order No. 18,293, found that Pinetree/Tamworth was the only SPP, of the seven who requested rehearing, whose rate order was suspended after the 20 day period for rehearing allowed under RSA 541:3.

We went on to state that "[t]o 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." (Emphasis Added)[7(92)]

The Commission further stated at

pages 9-10 of the order (71 NH PUC at p. 350):

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. (Emphasis Added)

This language was used only to demonstrate that, except for Pinetree/Tamworth none of the movants were in a position where they could have achieved the "reasonable reliance" or other "vested rights" asserted in their motion for rehearing.

[2] The fact that Pinetree/Tamworth met this threshold requirement does not in and of itself mean that the Commission cannot under any circumstances rescind or amend the rate order.

RSA 365:28 provides:

Altering Orders. At any time after the making and entry thereof, the Commission may, after notice and hearing, alter, amend, suspend, annul, set aside or otherwise modify any order made by it.

In amending prior orders, the Commission is of course bound by constitutional and other legal constraints. Re Global Moving & Storage of New Hampshire, 122 N.H. 784 (1982); Re Pennichuck Water Works, 120 N.H. 562 (1980); Meserve v. New Hampshire, 119 N.H. 149, 400 A.2d 34 (1979). However, the Commission may amend long term rate orders for good cause. Such cause might be breach of the applicants' obligations under the rate order, misrepresentations by the applicants or certain changes in circumstances affecting the nature of the project or the reliability of the project beyond that contemplated by the Commission when it authorized the rates. The SPP is not the only entity with constitutional, contractual or other legal rights in this matter. The purchasing utility along with its ratepayers, who are advancing funds to the SPPs through front-end loaded rates, also have protected interests which could require appropriate amendments to "final" orders.

These examples are not intended to be exhaustive and must be applied more definitively on a case by case basis. Rather they are offered to mitigate apparent misapprehensions on the part of both PSNH and Pinetree/Tamworth regarding the inviolable nature of "final" rate orders.

IV. CONCLUSION

PSNH, in its motion for rehearing, misconstrued Report and Order No. 18,223, did not present any new evidence which was not previously available to it and did not demonstrate that the Commission made any error of fact or law which would justify rehearing in this matter. Accordingly, PSNH's motion will be denied.

SUPPLEMENTAL ORDER

Based on the foregoing Report, which is hereby incorporated by reference; it is

ORDERED, that the motion for rehearing of Order 18,293, filed by Public Service Company of New Hampshire in docket DR 86-28, is denied.

By order of the Public Utility Commission of New Hampshire this thirteenth day of August,

1986.

FOOTNOTES

[1]The eight SPPs affected by the suspension in Order 18,223 are: Pinetree Power-Tamworth (DR 86-28); Franconia Power & Light (DR 86-35); Thermo Electron-Troy (DR 86-52); Thermo Electron-Conway (DR 86-53); Thermo Electron-Antrim (DR 86-54); Thermo Electron-Campton (DR 8655); Thermo Electron-Fitzwilliam (DR 86-56); Stewartstown Steam Co. (DR 86-98). Other SPPs affected by Order 18,223 that had not yet received long term rate orders are Pinetree PowerNorth, Inc. (DR 86-100); Pinetree Power-Berlin, Inc. (DR 86-101); Pinetree Power-Campton, Inc. (DR 86-102); Pinetree Power-Winchester, Inc. (DR 86-103); Pinetree Power Energy Corporation (DR 86-104); Pinetree Power-Hinsdale, Inc. (DR 86105); Pinetree Power-Lancaster, Inc. (DR 86-109); Pittsfield Power & Light (DR 86-125); Belmont Mill Power Associates (DR 86-128); Northeast Cogeneration Systems (DR 86-135). The suspended long term rates for Pinetree/Tamworth were previously approved NISI by Commission Order No. 18,112 dated February 11, 1986 (71 NH PUC 123), effective March 3, 1986.

[2]Report accompanying Order No. 18,293 (71 NH PUC at p. 350).

[3]PSNH motion for rehearing filed on June 25, 1986 at p 2.

[4]Id. at 2-3.

[5]Order No. 18,293 was dated June 4, 1986.

[6]PSNH motion for rehearing filed on June 25, 1986 at p 2.

[7]71 NH PUC at p. 349.

==========

[Go to End of 60315]

72 NH PUC 359

Re Continental Telephone Company of New Hampshire

DE 87-125
Order No. 18,794

New Hampshire Public Utilities Commission

August 14, 1987

ORDER allowing revisions to a tariff implementing customer-owned, coin-operated telephone service within the franchise area of a local exchange telephone carrier.

SERVICE, § 456 — Telephone — Customerowned, coin-operated telephone service — Tariff

revisions — Local exchange carrier.

[N.H.] Revisions to a tariff implementing customer-owned, coin-operated telephone service within the franchise area of a local exchange telephone carrier were allowed to go into effect where the revisions reflected mutual agreement between the carrier and commission staff.

By the COMMISSION:

ORDER

WHEREAS, on June 26, 1987, Continental Telephone Company of New Hampshire (CONTEL) filed with this Commission certain revisions to its Tariff No. 11 which implement customer-owned, coin-operated telephone service within its franchise area; and

Page 359

WHEREAS, anticipating a lengthy investigation, the Commission issued its Order No. 18,758 suspending said filing; and

WHEREAS, on July 30, 1987, CONTEL filed corrections which reflect mutual agreement between staff and company; and

WHEREAS, the Commission finds such filing as corrected, in the public interest; it is

ORDERED, that the suspension of Section 4, 1st Revised Contents, Original Sheets 3, 4 and 5 be, and hereby is, vacated and said revisions allowed to become effective on the date proposed, August 14, 1987.

By order of the Public Utilities Commission of New Hampshire this fourteenth day of August, 1987.

==========

NH.PUC*08/17/87*[60312]*72 NH PUC 351*New England Telephone and Telegraph Company, Inc.

[Go to End of 60312]

72 NH PUC 351

Re New England Telephone and Telegraph Company, Inc.

DE 87-24
Order No. 18,790

New Hampshire Public Utilities Commission

August 17, 1987

ORDER exempting a local exchange telephone carrier from a local zoning ordinance for the purpose of constructing an equipment hut.

---

1. ZONING — Exemption from local ordinances — Utility structures — Statutory requirements.

[N.H.] Pursuant to state statute RSA 674:301, structures used or to be used by a public utility may be exempted from local zoning ordinances if such an exemption is reasonably necessary for the provision of safe and adequate service. p. 353.

2. ZONING — Exemption from local ordinances — Utility structures — Construction of telephone equipment hut.

[N.H.] In reviewing a request by a local exchange telephone carrier for an exemption from a local zoning ordinance for the purpose of constructing an equipment hut, the commission considered the following factors: (1) its legal authority to grant the exemption; (2) the need for the construction; (3) alternatives to the proposed site and structure; (4) the effect on neighboring property values. p. 354.

3. ZONING — Exemption from local ordinances — Utility structures — Construction of telephone equipment hut.

[N.H.] In exempting a local exchange telephone carrier from a local zoning ordinance and allowing it to construct an equipment hut on land zoned as residential, the commission mandated that the carrier take all reasonable actions to ensure that the hut would be attractively built and landscaped. p. 356.

APPEARANCES: Robert E. Jauron, Esquire and Richard A. Samuels, Esquire for the Petitioner; Frederick J. Coolbroth, Esquire and Douglas A. McIninch, Esquire for the Citizens for Fair Zoning; Mary Hain, Esquire and Edgar D. Stubbs for the Staff of the Public Utilities Commission (PUC).

By the COMMISSION:

REPORT

I. PROCEDURAL HISTORY

This docket was opened on February 23, 1987 pursuant to a petition filed on said date by New England Telephone & Telegraph Company (NET or Company). NET's petition prayed that the Commission schedule a public hearing and exempt the petitioner's proposed equipment hut at 43 Lindahl Road in Bedford, New Hampshire from the operation of the Bedford Zoning Ordinance or any other regulation of the Town of Bedford, pursuant to N.H. Rev. Stat. Ann. § 674:30 (supp. 1986).

By an Order of Notice dated March 12, 1987 a hearing on the petition was scheduled for April 22, 1987 at 10 a.m. A Commission viewing of the site in question was scheduled for April 23, 1987 at 2 p.m. by the same Order of Notice. A group of residents in the vicinity of the proposed site, calling themselves the Citizens for Fair Zoning (CFZ), filed a motion to intervene

in the proceedings and a motion for a prehearing conference on April 16, 1987. The Citizens for Fair Zoning consist of residents from Woodland Hills Development which abuts the property in question across Lindahl Road. Woodland Hills is subject to certain restrictive covenants which do not pertain to the property in question. NET filed an objection to the motion for prehearing conference on April 21, 1987.

At the hearing scheduled for April 22, 1987, the Commission granted the motions by the Citizens for Fair Zoning to intervene and for a prehearing conference. Accordingly, the hearing on April 22 proceeded as a prehearing conference for the purpose of establishing a procedural schedule. The parties conferred and recommended a procedural schedule which the Commission accepted in Order No. 18,649 dated April 23, 1987. In said Order, the Commission rescheduled the hearing on the merits for May 3, 1987. At the request of the parties the hearing was subsequently continued to May 18 and 19, 1987. After notice to the parties the Commission viewed the site in question on April 22, 1987 on the day before the previous noticed date. The Commission designated PUC Executive Director and Secretary, Wynn E. Arnold as hearings examiner pursuant to N.H. Rev. Stat. Ann. § 363:17 (1984). Mr. Arnold viewed the site on April 23, 1987.

II. POSITIONS OF THE PARTIES

A. New England Telephone

NET argues that the proposed utility structure and its site is reasonably necessary for the convenience and welfare of the public. The proposed equipment hut and its location are the most economical and convenient alternatives available to NET. The structure has been designed with care taken that it be consistent with the architecture of the most expensive surrounding homes and it has not been shown that its location and use will impair the value of surrounding properties.

NET further contends that they are not obligated to consider condemnation as an alternative in a zoning exemption case in that condemnation and zoning exemption are statutory alternatives with no statutory preference of one over the other. Therefore, NET asserts, once it selected a zoning exemption as its preferred plan it did not have to examine the relative merits of condemnation as it may apply to the public good.[1](93)

B. Citizens for Fair Zoning

Page 352

The Citizens for Fair Zoning (CFZ) oppose the petition on essentially two grounds. First, they assert that there is no need for the proposed facility. Second, even if there is a need, there are other less obtrusive sites that could have been selected or methods used for meeting that need. The CFZ alleges that the Company's growth forecast is without basis in the record.[2](94) Even if the Company's growth forecast were to be accepted by the Commission, the Company's highest growth scenario does not support the construction of a structure as intrusive as the hut.[3](95) The anticipated need for the next 20 years can be met with presently available pole mounted equipment.

CFZ further argues that the installation of the Company's proposed building will have an

adverse effect on the surrounding neighborhood. The proposed site, a narrow strip of land with roads at the front and rear and on one side of the facility, cannot be adequately screened and creates additional traffic in a residential neighborhood. CFZ also objects to the commercial nature of the proposed structure in a residentially zoned district.[4](96)

CFZ witness Susan Bradley, a realtor, opined that the proposed structure would diminish property values in the neighborhood by five percent regarding at least eight homes. (Tr. 2-127)

Finally, the intervenors assert that if their positions and arguments do not prevail, the Commission should impose the same protections that the Town Zoning and Planning would impose, specifically:

a. Full screening — all sides including New Boston Road.

b. Restrictions on use — no more than one vehicle

c. Restrictions on hours of service — 9 a.m. to 5 p.m.

d. No exterior storage.

e. Continued maintenance of the facility consistent with neighborhood landscaping and buildings.

f. All wires, including power, to be underground.

g. No fencing.

h. No lighting.

i. Overall uses to be as consistent as possible with the spirit and intent of the covenants and restrictions at Woodland Hills.

j. Real estate rights necessary to enforce these conditions must be obtained from Mr. Bergeron.

C. Staff

The PUC Staff did not oppose the petition but expressed concern over NET's failure to consider condemnation as an alternative, NET's failure to more clearly delineate the differences between the proposed hut and alternative structures and NET's failure to clearly demonstrate the need for the additional service within the confines of the CSA.

III. COMMISSION ANALYSIS

A. Legal Authority

[1] N.H. Rev. Stat. Ann. § 674:301 (supp. 1986) provides:

674:30 Exemptions.

I. 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.

In previous decisions[5(97)] concerning petitions for exemptions from local regulation under § 674:30 and its predecessor statute, the Commission considered such factors as:

1. Potential damage to neighboring property.

2. Loss of value to nearby landowners from the weakening of the zoning ordinance.

3. The need to preserve legitimate local planning purposes.

4. The absence of meaningful discussion as to other sites.

5. Procedure used in the purchase of the subject property.

6. Whether the proposed construction is more industrial than residential.[6(98)]

The Commission does not summarily disregard zoning board decisions but carefully reviews the utility's request for exemption from local zoning ordinances to determine whether the exemption is reasonably necessary for the utility to provide adequate and safe service to its service territory.[7(99)]

B. Need for Construction

[2] In the case at bar, New England Telephone alleges that the additional plant is needed because the capacity of its outside plant for the Carrier Service Area (CSA) involved in this docket has reached an 85% fill thus triggering a review of future needs and of how said needs can best be met. NET estimated growth in the area at about 1200 pair for the 20 year planning period. The intervenors, the Citizens for Fair Zoning (CFZ), assert that there is no need for additional plant. A threshhold issue, therefore is whether or not there is a need for any additional construction regardless of its type or location.

NET generally relieves its facilities when they reach 85% of capacity since that is the crossover point which NET determined is the most economical to administer. Tr. 1-26. The CSA in question is outlined in Exhibit 5, a map of Bedford, as an orange area in the northwest corner of Bedford. Witness Morin testified for NET that the Company has monitored this section of Bedford and noted considerable growth in the last few years in the section that is forecasted to continue beyond the capacity of current plant to serve, thereby necessitating additional facilities to provide service to occupants of the area. Tr. 1-13.

The NET analysis was of section 10 of the Bedford exchange which consists of the CSA in question, which is generally residential in nature, as well as the area shown in Exhibit 5 as outlined by a dotted black line running from the central office out into the orange area. This latter portion of section 10 is mixed business and residential. Tr. 1-14. The outside plant gain forecast is summarized in Exhibit 1 at page 9. Exhibit 1 shows that approximately 11% of the anticipated growth will be in new lines to be installed at existing accounts as additional lines and the remainder will be installed for new buildings.

NET witness Minichiello testified that the system is beyond 85% of capacity and needs expansion. Neither he nor any other NET witness was able to explain the forecast or indicate which portions of the forecast pertain specifically to the CSA as opposed to the larger forecast area, Section 10. However, the forecast did not attribute any business growth to the CSA and Mr. Minichiello estimated an average of 35 new lines in each of the next two years and 50 lines per year thereafter.

This analysis was not credibly challenged by the intervenors. Two Woodland Hills residents, Dr. Alan Garstka and Ms. Susan Bradley, testified as effected residents of the area. Ms. Bradley testified also in her capacity as a real estate agent. While the Commission appreciates their comments and recognizes the sincerity of their concerns, the witnesses' testimony did not offer convincing substantive reason to rebut the NET

growth projection analysis. Despite the deficiencies in NET's presentation, we find that it met their burden of proof in this case especially in consideration of our finding infra regarding the potential impact of the proposal on the intervenor's property.

C. Alternatives To the Proposed Site and Structure

New England Telephone prefers the proposed site primarily because it is within the radius of effective service and is obtainable by means of voluntary easement as opposed to an adversarial condemnation proceeding. NET did not explore some alternative areas, such as sections of Joppa Road or more centrally located sites available through condemnation.

There are essentially two technologies that were presented as alternative ways of meeting the projected need. Tr. 16. The first was analog technology, which is the traditional way of providing telephone service over the last hundred years. Analog requires a dedicated pair of copper wires which extend from the central switching office to the end user of each single party line. Id. The second option is digital technology. Tr. 17. Digital electronics ("subscriber Loop Carrier" (SLC or "Loop Electronics") has been in use for approximately five years in the local exchange network. It allows NET to concentrate multiple single party lines on either a single pair of copper or a single fiber optic cable.

NET's studies indicated that the subscriber loop carrier is more cost effective and has other advantages over analog technology. Id. Digital better facilitates the implementation of future enhanced services and is more flexible than merely copper loop in that if growth does not materialize according to expectation, Digital Electronics can be cheaply removed and reused elsewhere, minimizing stranded investments. Loop electronics provide better quality service and it allows for more expeditious growth beyond the amount forecasted. Accordingly, the Commission agrees with NET's selection of loop electronics to meet the need for additional service in the CSA.

The loop electronics could be implemented through the standard subscriber carrier, the SLC-96, allowing NET to derive 96 pairs from 10 copper pairs. Accordingly, the projected growth could be met with 12 SLC-96 systems. The surface hut, which NET chose as the manner of housing the loop electronics, has a projected cost of $25,000 compared to the alternative Controlled Environment Vault (CEV), an underground structure which would cost an estimated additional $40,000. The metal cabinets, 36-type and the 80-type, were priced at $9500 and $16,000 respectively. For the projected growth, the 12 SLC-96 systems required three 80-type cabinets or six 36-type cabinets. All but the 36-type cabinets require an easement and variance for installation and operation in the residentialagricultural zone of the CSA. The 36-type can be mounted on existing poles which are already licensed. The cost of these six cabinets, however, is $57,000. That relatively high price plus the potential of damage from vehicular accident

precluded its selection.

The intervenors claimed that growth in the CSA would be 600 homes with complete development. Even if such an estimate were to prove to be more accurate than NET's there would still be a need for either one hut, one CEV, two 80-type cabinets or three 36-type cabinets. The cost of the last three alternatives are $60,000, $32,000 and $28,500 respectively. Of course, given the fact that the 36-type cabinets require no easements, there would be a saving of $24,000 ($25,000 less the option fees) by elimination of the Lindahl Road site. As indicated earlier, however, these pole mounted equipment shelters are subject to road hazards. Maintenance, repair or replacement of damaged equipment could easily offset the easement savings not to mention the lessening of the quality of service due to service interruptions. The selected hut has a capacity for 27 SLC-96 components, but only those needed would

Page 355

be installed as requirements developed, thereby leaving room for growth.

Once the shelter decision was made, NET had to find the site. Owning no property within the CSA, NET was forced to find land meeting the Company's criteria on which the landowner would grant an easement. Six such landowners were approached with all refusing for nonmonetary reasons. Arthur N. Bergeron, 43 Lindahl Road, gave NET an option to locate the hut on his property adjacent to Woodland Hills. Residents of Woodland Hills oppose the commercial use of this property claiming that such use would violate the covenants of the development and it would impact the value of their homes. Such opposition prevailed when NET applied for a variance from the Town of Bedford. On denial of the variance, NET applied for relief from this Commission pursuant to N.H. Rev. Stat. Ann. §674:30 (supp. 1986).

The question was raised during the hearing as to whether condemnation of one of the earlier rejected sites might be more appropriate than the proposed site on Lindahl Road. All of the alternative sites are zoned residential/agricultural, the same as the proposed site, thereby necessitating a variance regardless of site selection. NET indicated that it was not its policy to condemn land, particularly when a willing landowner has granted an option on his land for an easement. The Commission agrees that based on the record of this particular case, the proposed site is preferable to condemnation of one of the other six alternate sites. We agree primarily because a voluntary easement is generally preferable to an adversarial condemnation proceeding and, primarily, because, in this particular case, we will find, as discussed below, that the structure on the proposed site will not substantially effect property values at Woodland Hills.

D. Impact on Neighboring Property Values

The Commission agrees with NET that the proposal will not effect neighboring property values. The proposed structure has an attractive design and requires exemption only because of its commercial use. If Mr. Bergeron, the owner of the proposed site, should want to build an identical structure for residential use, he would be allowed to do so. Accordingly, CFZ's objection seems to go to the commercial nature of the structure rather than to the design of the structure. The record is clear, however, that the "commercial" impact and appearance of the structure will be minimal. Service visits to the structure will not substantially increase traffic on Lindahl Road, the structure is attractively designed so that it could pass for residential use, and

New England Telephone has agreed to landscape the area so as to minimize visual impact even though a residential owner would not have to do so under the Bedford Zoning Ordinance. NET Witness Emerton, a real estate appraiser, examined the area in question and applied the before and after valuation test. He found that the proposed structure would not effect neighboring land values. There was no convincing testimony to rebut Mr. Emerton's report. Exh. 3. The Commission's observations noted above as well as its view of the property along with Mr. Emerton's appraisal lead us to the conclusion that the proposed structure on the proposed site will not adversely affect the neighborhood. NET has offered to screen the hut in accordance with the reasonable desires of the landowner, the neighbors and town officials. Fencing and exterior lighting are not planned but would be considered on request of the Town or its residents.

[3] Since the proposed hut would conform with the Bedford Zoning Ordinance if its intended use were residential and because commercial manifestations of the hut are minimal, we see no need to condition the approval of the requested exemption beyond mandating that New England Telephone take all reasonable actions to ensure that the hut will be as attractively built and landscaped as represented during these proceedings. We also expect that NET will, as offered, make every reasonable attempt to

accommodate neighbors and town officials regarding the maintenance and operation of the facility.

We will so order.

ORDER

For reasons cited in the foregoing Report, which is hereby incorporated by reference; it is hereby

ORDERED, that the petition by the New England Telephone and Telegraph Company to exempt its proposed equipment hut at 43 Lindahl Road, Bedford, New Hampshire, from the operation of the Bedford Zoning Ordinance or any other ordinance or regulation of the Town of Bedford promulgated under RSA Chapter 674 is hereby granted subject to the conditions cited in the accompanying report.

By order of the Public Utilities Commission of New Hampshire this seventeenth day of August, 1987.

FOOTNOTES

*Commissioner Linda G. Bisson did not participate.

[1]NET Memorandum of Law dated and filed May 22, 1987.

[2]Citizens for Fair Zoning Memorandum and Argument dated May 22, 1987, p. 4.

[3]Id. at 3 and 4.

[4]Ibid at pp. 6 and 7.

[5]Re Hampton Water Works Co., 67 NH PUC 597 (1982).

[6]Id.

[7]Re Hampton Water Works Co., 67 NH PUC 597 (1982).

==========

[Go to End of 60313]

72 NH PUC 357

Re Public Service Company of New Hampshire

DE 87-140
Order No. 18,792

New Hampshire Public Utilities Commission

August 18, 1987

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

ELECTRICITY, § 7 — Wires and cables — Authorization for distribution lines crossing public waters.

[N.H.] An electric utility was conditionally authorized to place and maintain electric lines across public waters where such lines were required to meet the public service obligations of the utility.

By the COMMISSION:

ORDER

WHEREAS, on July 21, 1987, the Public Service Company of New Hampshire (PSNH) filed with this Commission its petition under RSA 371:17-20 for license to maintain electric lines over and across public waters of the Androscoggin River located in Shelburne, New Hampshire; and

WHEREAS, in order to meet the reasonable requirements of service to the public, it is necessary for the Petitioner to construct, operate and maintain distribution lines consisting of wire and cables over and across certain public waters in the State of New Hampshire, which lines are an integral part of its electric system; and

WHEREAS, the proposed such crossing consists of constructing one aerial 7.2 kV distribution line over and across the Androscoggin River where identified in the Petition as in Exhibit 1A1 and constructed as

indicated on Plan D-7649-358 (Exhibit 1A2); and

WHEREAS, such construction is necessary because the State of New Hampshire has relocated and built a new bridge across the Androscoggin River affecting a section of North Road requiring the relocation of the existing 7.2 kV electric distribution line; and

WHEREAS, the relocated crossing will be approximately 570 feet in overall length with approximately 207 feet over the water on supporting structures maintained by the Petitioner pursuant to easements already obtained; and

WHEREAS, the proposed relocation and construction appears to be in the public good; and

WHEREAS, the public should be offered the 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 September 4, 1987; and it is

FURTHER ORDERED, that the petitioner effect said notification by publication of this order once in The Union Leader. Such publication to be no later than August 26, 1987 and designated in affidavits to be made on a copy of this order filed with this office; and it is

FURTHER ORDERED, NISI that the petitioner be authorized, pursuant to RSA 371:17 et seq to place and maintain electric lines over and across the public waters of the Androscoggin River in Shelburne, New Hampshire; and it is

FURTHER ORDERED, that all construction meet requirements of the National Electrical Safety Code and all other applicable safety standards; and it is

FURTHER ORDERED, that such authority shall be effective 20 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 eighteenth day of August, 1987.

==========

NH.PUC*08/18/87*[60314]*72 NH PUC 358*Public Service Company of New Hampshire

[Go to End of 60314]

72 NH PUC 358

Re Public Service Company of New Hampshire

DE 87-134
Order No. 18,793

New Hampshire Public Utilities Commission

August 18, 1987

ORDER nisi authorizing an electric utility to place and maintain an electric line across state-owned land.

ELECTRICITY, § 7 — Wires and cables — Authorization for an electric line crossing stateowned land.

[N.H.] An electric utility was conditionally authorized to place and maintain an electric line across state-owned land where the line was required to provide service to a recreational vehicle park.

By the COMMISSION:

ORDER

WHEREAS, on July 13, 1987, the Public Service Company of New Hampshire (PSNH) filed with this Commission its petition under RSA 371:17 et seq. for a license to construct and maintain electric lines over and across land of the State of New Hampshire Transportation Authority in the Town of Belmont, New Hampshire; and

WHEREAS, in order to meet the reasonable requirements of service to a recreation vehicle park consisting of approximately 12 recreational vehicles, it is necessary for the Petitioner to construct a single phase 120/240 volt electric distribution line over

and across land of the State of New Hampshire Transportation Authority's Concord to Lincoln Line in Belmont, New Hampshire; and

WHEREAS, it is proposed that the electric line will cross the railroad track at a point near Val Station 1183 + 50 as identified on the Petitioner's drawing entitled "Railroad Crossing 240 Volts, 2200 feet South of Whistle Post]22-92, Belmont, New Hampshire" Public Service Company of New Hampshire Engineering Division No. 9857 date April 22, 1987; and

WHEREAS, the lines and structure supporting them will be erected and maintained by the Petitioner on easement to be provided by the customer and will be constructed so as to not interfere with the normal operation of the railroad; and

WHEREAS, the Commission finds such construction to be in the public good; and

WHEREAS, the public should be offered the 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 September 4, 1987; and it is

FURTHER ORDERED, that the petitioner effect said notification by publication of this order once in The Union Leader. Such publication to be no later than August 26, 1987 and designated

in affidavits to be made on a copy of this order filed with this office; and it is

FURTHER ORDERED, NISI that the petitioner be authorized, pursuant to RSA 371:17 et seq to place and maintain electric lines over and across Land of the State of New Hampshire Transportation Authority in the Town of Belmont, New Hampshire; and it is

FURTHER ORDERED, that all construction meet requirements of The State Of New Hampshire Transportation Authority And of the National Electrical Safety Code and all other applicable safety standards; and it is

FURTHER ORDERED, that such authority shall be effective 20 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 eighteenth day of August, 1987.

==========

NH.PUC*08/19/87*[60317]*72 NH PUC 360*Public Service Company of New Hampshire

[Go to End of 60317]

72 NH PUC 360

Re Public Service Company of New Hampshire

DE 87-138
Order No. 18,795

New Hampshire Public Utilities Commission

August 19, 1987

ORDER nisi authorizing an electric utility to place and maintain an electric transmission line across state-owned land.

ELECTRICITY, § 7 — Wires and cables — Authorization for an electric transmission line crossing state-owned land.

[N.H.] An electric utility was conditionally authorized to place and maintain an electric transmission line across state-owned land for the purpose of providing power to an electric cooperative; the line was deemed necessary for the utility to meet

the reasonable requirements of service to the public.

By the COMMISSION:

ORDER

WHEREAS, on July 20, 1987, the Public Service Company of New Hampshire (PSNH) filed with this Commission its petition under RSA 371:17 et seq. for a license to construct and maintain electric transmission lines over and across land of the State of New Hampshire Transportation Authority in the town of North Woodstock, New Hampshire; and

WHEREAS, in order to meet the reasonable requirements of service to the public, it is necessary for the Petitioner to construct a three phase 34.5 KV electric transmission line over and across land of the State of New Hampshire Transportation Authority's Concord to Lincoln Line in North Woodstock, New Hampshire; and

WHEREAS, the electric transmission line is necessary to provide power to the New Hampshire Electric Cooperative, Inc. for their customers; and

WHEREAS, the proposed line will cross the railroad track at a point 3250 feet south of Burney's Crossing as indicated in the petition on Exhibit 1, entitled "proposed 34.5 KV wire crossing, State of New Hampshire Railroad 3250 feet more or less south of Burney's Crossing, North Woodstock, New Hampshire" Public Service Company of New Hampshire Engineering Division No. D-9861 dated July 8, 1987; and

WHEREAS, the lines and structures supporting them will be erected and maintained by the petitioner on an existing easement and will be constructed so as to not interfere with the normal operation of the railroad; and

WHEREAS, the Commission finds such construction to be in the public good; and

WHEREAS, the public should be offered the 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 September 4, 1987; and it is

Page 360

FURTHER ORDERED, that the petitioner effect said notification by publication of this order once in The Union Leader. Such Publication to be no later than August 27, 1987 and designated in affidavits to be made on a copy of this order filed with this office; and it is

FURTHER ORDERED, NISI that the petitioner be authorized, pursuant to RSA 371:17 et seq to place and maintain electric lines over and across land of the State of New Hampshire Transportation Authority in the Town of North Woodstock, New Hampshire; and it is

FURTHER ORDERED, that all construction meet requirements of the State of New Hampshire Transportation Authority and of the National Electrical Safety Code and all other applicable safety standards; and it is

FURTHER ORDERED, that such authority shall be effective 20 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

August, 1987.

==========

NH.PUC*08/19/87*[60318]*72 NH PUC 361*AT&T Communications of New Hampshire, Inc.

[Go to End of 60318]

72 NH PUC 361

Re AT&T Communications of New Hampshire, Inc.

DE 87-085
Order No. 18,796

New Hampshire Public Utilities Commission

August 19, 1987

ORDER authorizing a telecommunications corporation to operate as a public utility solely for the purpose of providing Switched Digital Service and AT&T Software Defined Network Service.

PUBLIC UTILITIES, § 117 — Telephone — Authority to conduct business as a public utility — Factors affecting authorization.

[N.H.] A telecommunications corporation was authorized to conduct business as a public utility solely for the purpose of providing Switched Digital Service and AT&T Software Defined Network Service where (1) neither of the services was offered by an existing New Hampshire telephone utility, (2) customers were requesting the services, (3) the corporation was authorized to do business in the state, (4) the corporation was financially, technically and operationally able to provide the services, (5) the interested parties agreed that the authorization should be granted, and (6) the corporation had agreed to submit all filings and reports required by the commission and to pay all assessments levied by the commission.

Parties: AT&T Communications of New Hampshire, Inc., the Staff of the Public Utilities Commission, Continental Telephone Company of New Hampshire, Inc. and Continental Telephone Company of Maine, Inc., New England Telephone and Telegraph Company, Granite State Telephone, Inc., Merrimack County Telephone Company, and Union Telephone Company.

By the COMMISSION:

ORDER

WHEREAS, on May 1, 1987 AT&T Communications of New Hampshire, Inc., hereinafter AT&T-CNH applied pursuant to N. H. Rev. Stat. Ann. § 374:22 (1984) for permission to commence business as a public utility; and

WHEREAS, the Applicant concurrently filed tariffs with an effective date of June 1, 1987

establishing rates, terms, and conditions for 56 kilobit per second (Kbps) Switched Digital Service and AT&T Software Defined Network Service, such services described as primarily interstate in nature but also intrastate in incidental amounts; and

WHEREAS, a prehearing conference was held on June 10, 1987 pursuant to N.H. Admin. Code Puc § 203.05 and N.H. Rev.

Stat. Ann. § 541-A:16 V. (b) (supp. 1986) to encourage informal disposition, and to determine the scope and procedural schedule of the investigation of the application and the proposed tariffs; and

WHEREAS, in its original petition the Applicant stated that it may develop additional services for the intrastate market in the future; and

WHEREAS, AT&T-CNH proposes as its service area, the entire State of New Hampshire; and

WHEREAS, the Applicant filed an amended petition on June 24, 1987 which limited its application for permission to operate as a public utility in order to provide only intrastate Software Defined Network Service and 56 kbps Switched Digital Service; and

WHEREAS, on the twelfth day of August, 1987 all of the parties to this proceeding filed a settlement agreement that stipulated to the following:

A. STIPULATED FINDINGS OF FACT

AT&T-CNH represents and warrants and the parties do not dispute the following facts.

1. On May 1, 1987 AT&T-CNH filed a petition which effectively applied pursuant to N.H. Rev. Stat. Ann. § 374:22 (1984) for permission to commence business as a public utility. The Applicant concurrently filed tariffs establishing rates, terms, and conditions for 56 kilobit per second Switched Digital Service and AT&T Software Defined Network Service, such services described as primarily interstate in nature but also intrastate in incidental amounts ("the proposed services"). The petition stated that the Applicant may develop additional services for the intrastate market in the future. The proposed service area is the entire State of New Hampshire. This stipulation recommends that the Commission not decide the issue of whether the permission is for an exclusive franchise.

2. On June 24, 1987 AT&T-CNH filed an amended petition in this proceeding. Said petition replaced the originally filed petition. In the amended petition, AT&TCNH requests, pursuant to N.H. Rev. Stat. Ann § 374:22, permission, authorization, certification or other action as may be necessary or appropriate to establish the right of the Applicant to operate as a public utility in order to provide Software Defined Network Service and 56 kbps Switched Digital Service communications common carrier services between any points within the State of New Hampshire.

3. Neither of the services is presently offered by New Hampshire telephone utilities.

4. Customers are requesting the proposed services.

5. The Applicant is incorporated and authorized to do business in the State of New Hampshire and is a wholly-owned subsidiary of AT&T Communications of New England, Inc. (AT&T)

6. AT&T will operate and manage New Hampshire intrastate communications functions for the Applicant that are incidental and ancillary to the proposed services. AT&T will, among other things, provide or arrange for the provision of all plant, facilities, personnel and other resources necessary for the provision of the proposed intrastate telecommunications services by the Applicant.

7. AT&T-CNH has shown that it is financially, technically, and operationally qualified to be a public utility and to provide common carrier telecommunications. For the present, the Applicant will generally utilize existing facilities and operating personnel in the provision of the proposed services.

B. STIPULATED DISPOSITION OF ISSUES

1. Provision of the services proposed is in the public interest.

2. The proposed engaging in business, construction or exercise of right, privilege or franchise, for the proposed services, would be for the public good; and

3. The parties to this agreement agree that the Commission shall grant AT&T-CNH

Page 362

authority to operate as a public utility for the purposes set forth in the proposed application, for the purposes of the disposition of this case.

4. This stipulation recommends that the Commission not decide the issue of whether the permission is for an exclusive franchise.

5. The effective date of the proposed tariffs should be coincident with the effective date of tariffs to provide terminating switched access for AT&T-CNH's Software Defined Network Service ("access tariffs"). The access tariffs will be filed promptly by local exchange companies.

AT&T-CNH agrees to submit all the filings and reports required by the New Hampshire Public Utilities Commission for the telephone companies doing business in the State of New Hampshire. AT&T-CNH also agrees to pay all assessments levied upon the company by the New Hampshire Public Utilities Commission, based on the amount of revenues received as a result of doing business in New Hampshire.

C. STIPULATIONS OF AT&T

AT&T warrants and agrees as follows, all other parties have no position on the following matters.

AT&T-CNH agrees to submit all the filings and reports required by the New Hampshire Public Utilities Commission for the telephone companies doing business in the State of New Hampshire. AT&T-CNH also agrees to pay all assessments levied upon the company by the New Hampshire Public Utilities Commission, based on the amount of revenues received as a result of doing business in New Hampshire; and

WHEREAS, pursuant to N.H. Rev. Stat. Ann § 374:26 the Commission may grant permission to conduct business as a utility without a hearing when all interested parties are in agreement; and

WHEREAS, based on the stipulated facts included in the amended petition that AT&T-CNH is financially, technically and operationally able to provide the proposed services, that there is a need for the service, and that AT&T-CNH is organized under the laws of the State of New Hampshire; it is hereby

ORDERED, that the Commission accepts the settlement agreement, and it is 10 FURTHER ORDERED, that AT&TCNH shall be allowed pursuant to N.H. Rev. Stat. Ann §§ 374:22, 374:24, and 374:26, to operate as a public utility, specifically a common carrier, solely for the purpose of providing 56 kilobit per second Switched Digital Service and AT&T Software Defined Network Service on an incidental basis only for the service territory of the entire State of New Hampshire; and it is

FURTHER ORDERED, that the Commission does not by this Order decide the issue of whether this permission is for an exclusive franchise; and it is

FURTHER ORDERED, that the substance of AT&T's proposed tariff pages are approved except that they shall be refiled with effective dates which are coincident with the effective date of tariffs to provide terminating Switched Access for AT&TCNH's Software Defined Network Service ("access Tariffs") when such access tariffs have been approved; and it is

FURTHER ORDERED, that, pursuant to N.H. Rev. Stat. Ann. §374:15, AT&T-CNH submit all the filings and reports required by the New Hampshire Public Utilities Commission for the telephone companies doing business in the State of New Hampshire and that, pursuant to N.H. Rev. Stat. Ann. §363-A:1, et seq., AT&T-CNH pay all assessments levied upon the company by the New Hampshire Public Utilities Commission, based on the amount of revenues received as a result of doing business in New Hampshire.

By order of the Public Utilities Commission of New Hampshire this nineteenth day of August, 1987.

==========

NH.PUC*08/19/87*[60319]*72 NH PUC 364*AT&T Communications of New Hampshire, Inc.

[Go to End of 60319]

72 NH PUC 364

Re AT&T Communications of New Hampshire, Inc.

DE 87-085
Supplemental Order No. 18,797

New Hampshire Public Utilities Commission

August 19, 1987

APPROVAL of a tariff providing for intrastate, terminating only, switched access service

relating to the custom network service offering of an interexchange telephone carrier.

RATES, § 572 — Telephone — Switched access service — Software defined network service — Interexchange carrier.

[N.H.] After determining that proposed rates and terms were just and reasonable and in the public interest, the commission approved a tariff providing for intrastate, terminating only, switched access service, for use in connection with the software defined network type of customer network service to be provided by an interexchange telephone carrier.

By the COMMISSION:

SUPPLEMENTAL ORDER

WHEREAS, On May 1, 1987 AT&T Communications of New Hampshire, Inc. hereinafter AT&T-CNH applied pursuant to N.H. Rev. Stat. Ann. § 374:22 (1984) for permission to commence business as a public utility; and

WHEREAS, on June 24, 1987 AT&TCNH filed an amended application for permission to operate as a public utility in order to provide only the following proposed services AT&T software defined network service and 56 kilobit per second (Kbps) switched digital service between any points within the State of New Hampshire; and

WHEREAS, on August 19, 1987 in the captioned proceeding we issued Order No. 18,796 (72 NH PUC 361) which approves the amended application conditioned on our approval of access tariffs; and

WHEREAS, on July 22, 1987 New England Telephone and Telegraph Company ("NET" or "New England Telephone") filed a tariff to provide the necessary regulations, rates, and charges for incidental intraLATA usage completed over switched access services that have been provided to carriers in association with their custom network service offering; and

WHEREAS, in connection with the provision of 56 Kbps service, AT&T-CNH has represented that it has no present demand for and is not now requesting originating or terminating intrastate switched access service since special access service will be provided for originating and terminating access for 56 Kbps service; and because special access service is jurisdictionally interstate, its rates, charges, terms, conditions, and provisions are governed by the interstate special access tariffs of the local exchange carriers; and

WHEREAS, in connection with the provision of the software defined network service, AT&T-CNH has represented that it has no demand for and is not now requesting intrastate originating switched access service, and instead, special access service will be provided for originating access for software defined network service. Further, since special access service is jurisdictionally interstate, its rates, charges, terms, conditions, and provisions are governed by the interstate special access tariff of the local exchange carriers; and

WHEREAS, AT&T-CNH has represented that it has demand for and is now requesting

intrastate, terminating only, feature groups C&D switched access service; and

WHEREAS, the tariffs in question provide for intrastate terminating only switched access service for use in connection with the software defined network type of customer network service to be provided by AT&T-CNH; and

WHEREAS, after investigation the Commission has determined that the proposed rates, charges, terms, conditions, and provisions for terminating only switched access

Page 364

service are just and reasonable and in the public interest; and

WHEREAS, no other common carrier services have as yet been proposed before this Commission; and

WHEREAS, the Commission finds it necessary to give notice and an opportunity to be heard to other common carriers that may want to offer similar services; and

WHEREAS, this Commission is still investigating New England Telephone Company's cost of service in Docket DR 85-182; and

WHEREAS, AT&T's current customer demand is in New England Telephone Service area only; it is hereby

ORDERED NISI that the following proposed tariff pages

NHPUC - NO. 77

Master Table of Contents - Original Page 1

Tariff Information - Original Page 1

- Original Page 2

- Original Page 3

Table of Contents - Original Page 1

Section 1 - Original Page 1

Section 2 - Original Page 1

- Original Page 2

- Original Page 3

- Original Page 4

- Original Page 5

- Original Page 6

Section 3 - Original Page 1

Section 4 - Original Page 2

- Original Page 3

- Original Page 4

Section 5 - Original Page 1

Section 6 - Original Page 1

be, and hereby, are approved but limited to the provision of intrastate terminating only feature groups C&D switched access service; and it is

FURTHER ORDERED that the reasonableness of this rate may be reviewed after the outcome of Docket DR 85-182; and it is

FURTHER ORDERED that NET shall notify all persons desiring to be heard on 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, said publication to be made no later than ten 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 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 days after the date of this Order; and it is

FURTHER ORDERED that this Order Nisi shall be effective thirty days from the date of this order unless comments and/or a request for a hearing are filed prior to the effective date.

By order of the Public Utilities Commission of New Hampshire this nineteenth day of August, 1987.

==========

NH.PUC*08/19/87*[60320]*72 NH PUC 365*Manchester Water Works

[Go to End of 60320]

72 NH PUC 365

Re Manchester Water Works

DE 87-146
Order No. 18,798

New Hampshire Public Utilities Commission

August 19, 1987

ORDER nisi authorizing a service extension by a water utility.

SERVICE, § 210 — Extensions — Water utility.

[N.H.] A water utility was conditionally authorized to extend further its mains and services, in an area which would be served under the utility's regularly filed tariff and in which no other water utility had franchise rights.

By the COMMISSION:

ORDER

WHEREAS, Manchester Water Works, a water public utility operating under the jurisdiction of this Commission in areas served outside the city of Manchester, by a petition filed July 29, 1987, seeks authority under RSA 374:22 and 26 as amended, to further extend its mains and service in the town of Bedford; and

WHEREAS, no other water utility has franchise rights in the area sought, and the Petitioner submits that the area will be served under its regularly filed tariff; and

WHEREAS, after investigation and consideration, it appears that the granting of the petition will be for the public good; and

WHEREAS, the public should be offered an opportunity to respond in support or in opposition before the Commission acts on this petition; it is hereby

ORDERED, that all persons interested in responding to the petition be notified that they may submit their comments to the Commission or may submit a written request for a hearing in this matter no later than September 4, 1987; and it is

FURTHER ORDERED, that Manchester Water Works, effect said notification by publications 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 August 27, 1987, and documented in an affidavit to be made on a copy of this Order and filed with this office; and it is

FURTHER ORDERED, NISI, that Manchester Water Works, be authorized pursuant to RSA 374:22, to extend its mains and service in the town of Bedford in an area herein described, and as shown on a map on file in the Commission offices:

All presently unfranchised areas bounded on the north by the Goffstown/Bedford town line, on the east by the Manchester/ Bedford town line, on the south by existing franchise limits and on the west by all properties abutting Rundlett Hill Road.

and it is

FURTHER ORDERED, that such authority shall be effective twenty days from the date of this Order 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 nineteenth day of August, 1987.

==========

72 NH PUC 366

Re Vicon Recovery Systems, Inc.

DR 86-130
Order No. 18,799
New Hampshire Public Utilities Commission
August 20, 1987

MOTION for rehearing of order rescinding long term rate previously granted to a cogeneration project; denied.

COGENERATION, § 24 — Rates — Rescission of long term rate.

[N.H.] The commission refused to rehear an order that rescinded a long term rate previously granted to a cogeneration project for failure to comply with conditions, holding that (1) the opposition of an electric utility, which all parties knew had contested all filings by cogeneration facilities throughout the year, did not provide a justifiable excuse for not achieving a series of milestones, because the prior order had been issued on the assumption that the project would achieve certain milestones despite the opposition; and (2) rescission of approval when the

conditions were not satisfied was not discriminatory, because the commission was merely applying the same standards applied to other developers that had filed petitions contemporaneously.

APPEARANCES: As previously noted.

By the COMMISSION:*

REPORT

I. PROCEDURAL HISTORY

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, DE 83-62, 69 NH PUC 352, 61 PUR4th 132 (1984) (DE 83-62) and DR 85-215, 70 NH PUC 753, 69 PUR4th 365 (1985) (DR 85-215). The Commission Staff issued data requests on May 8, 1986 to which Vicon responded on June 18, 1986. On August 1, 1986 by Order No. 18,356 (71 NH PUC 435) the Commission granted Vicon a 20 year long term rate, conditional upon Vicon providing the Commission with an affidavit attesting to the finalization of its financing, construction permits, and agreements with participating municipalities by January 1, 1987.

On December 31, 1986, Vicon submitted an affidavit concerning the status of its project that attested that the financing, permits, and agreements had not been finalized, and on February 3, 1987 the Commission ordered Vicon to appear before the Commission to show cause why Order No. 18,356 should not be found null and void. Following hearings on April 8, 1987 and June 10, 1987, the Commission issued Re- port and Order No. 18,754 (72 NH PUC 298) which, 1.) found that Vicon had failed to show cause why, having not complied with the conditions in Order No. 18,356, its long term rate should not be rescinded, 2.) reaffirmed the findings in Order Nos. 18,356, 18,415 (71 NH PUC 565) and 18,481 (71 NH PUC 663) in the instant docket, and 3.) ordered that the long term rate granted Vicon in Order No. 18,356 was null and void. On July 31, 1987, Vicon petitioned for Rehearing of Order No. 18,754.

II. POSITION OF VICON

Vicon alleges that Order No. 18,754 was not supported by a preponderance of the evidence. Vicon does not challenge the Commission's jurisdiction to have established conditions in its rate order. However, it argues that the Commission should have modified those conditions, averring that Vicon could have satisfied the conditions but for the opposition of Public Service Company of New Hampshire (PSNH). Vicon contends that the Commission has not adopted "drop dead" dates, that the technical and economic feasibility of the project is not in question, and that the evidence (Ex. 1 to the Motion for Rehearing) supports Vicon's ability to achieve commercial operation within reasonable proximity to August 31, 1989, the end of the first power year contained in Vicon's rate petition. Therefore, Vicon argues, it has satisfied the major purpose behind the Commission decision to incorporate the conditions. Vicon further argues that the Commission's rescission treats Vicon differently from other developers who have been granted rates pursuant to DE 83-62 and DR 85-215 and that the rescission is, therefore, discriminatory. Vicon states that the case of the Concord Regional Solid Waste Recovery Project (DR 86-39) is irrelevant as the conditional service agreement and escrow financing were accomplished prior to its petition for rates for tax reasons, a consideration that was not present in Vicon's case.

III. COMMISSION ANALYSIS

Having reviewed the evidence in this docket, our previous orders and Vicon's

Motion for Rehearing, the Commission finds that Vicon has presented no fact or argument that was not fully considered prior to the issuance of Order No. 18,754. We find the decision was reasonable and lawful, and we will, therefore, deny Vicon's Motion for Rehearing.

Vicon alleges, and quotes the minority opinion as support, that the preponderance of the evidence indicates that Vicon would have satisfied the conditions in its rate order but for the opposition of PSNH. Such analysis misses the point as set forth in the majority opinion. Order No. 18,356 was based on the assurances of Vicon that it would be able to achieve a series of milestones at the latest by December 31, 1986. That Order was issued in the context that all Commission Orders are subject to appeal. The fact that PSNH had contested all filings by Qualified Facilities (QFs) throughout 1986 was known to all the parties prior to our decision. As the Order was issued on the assumption that Vicon would achieve the milestones it presented the Commission despite00 PSNH opposition, that opposition can not now provide a justifiable

excuse for not achieving the milestones.

The Commission has not as a general matter established "drop dead" dates beyond which a developer's long term rate order is automatically rescinded. The Commission is addressing on a case by case basis the instances of developers, some of whom have invested substantial sums in the construction of their projects, who have failed to achieve their commercial operation dates. However, we have become increasingly aware that certain developers have been unable to meet the commitments that were made regarding their petitions. During the past year and a half, we have, therefore, both made more explicit the types of milestones we believe need to be attained prior to filing for long term rates and rejected petitions where the progress made by the project was insufficient to provide us with confidence the developer would be able to fulfill his representations. Vicon was a borderline case in that the petition acknowledged that many of the indications of maturity (service contracts, permits, financings, etc.) were not present, but averred that progress was being made on all aspects of the development process such that all of the elements would be present by the end of 1986. As a result of Vicon's assertions, the Commission treated it as a special case, imposing initially less stringent standards on the obvious signs of project maturity but making clear that a "drop dead" date of January 1, 1987 was being established for Vicon's achievement of its listed milestones. Having explicitly delineated at the time of approving Vicon's long term rate, and in our subsequent orders, what conditions Vicon would have to satisfy in order to continue to be treated as a special case, we are not now being discriminatory in rescinding that approval when the conditions were not satisfied. We are merely applying to Vicon the same standards that we applied to other developers who filed petitions contemporaneously.

Finally, Vicon has apparently misunderstood our discussion of negotiating conditional service agreements and financings similar to those negotiated by the Concord Regional Solid Waste Recovery Project. The conditional arrangements that we contemplated would be effective assuming that PSNH were not00 successful in its appeal. Such agreements would assure this Commission that all other aspects of the project negotiation had been resolved and that the 21 month schedule displayed on Vicon's Ex. 1 to its Motion for Rehearing would be implemented as soon as PSNH's appeals were exhausted.

Our Order will issue accordingly.

ORDER

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

ORDERED, that Vicon's Motion for Rehearing be, and hereby is, denied.

By order of the Public Utilities Commission of New Hampshire this twentieth day of August, 1987.

FOOTNOTES

*Commissioner Bisson did not participate.

==========

72 NH PUC 369

Re New England Telephone and Telegraph Company

DE 86-310
Order No. 18,803

New Hampshire Public Utilities Commission

August 25, 1987

ORDER authorizing a universal wide area telephone service access line tariff.

RATES, § 593.1 — Telephone — Wide area telephone service — Access line tariff — Local exchange carrier.

[N.H.] The commission approved a "universal wide area telephone service access line" (WAL) tariff, which enabled a local exchange telephone carrier to assess usage charges for use of its facilities to complete a jurisdictionally intraLATA call placed by an end user employing a jurisdictionally interstate wide area telephone service (WATS) access line, because the WAL tariff contained the same rates as the existing WATS tariff, which were shown to be reasonable.

APPEARANCES: Philip M. Huston, Jr., Esq. on behalf of New England Telephone and Telegraph Company; David J. Braiterman, Esq. on behalf of Burlington Telephone Company; and Mary C.M. Hain, Esq. and Edgar D. Stubbs, Jr. on behalf of the Staff of the New Hampshire Public Utilities Commission.

By the COMMISSION:

REPORT ON THE PREHEARING CONFERENCE

I. PROCEDURAL HISTORY

On December 16, 1986 New England Telephone and Telegraph Company ("NET") filed Part A, Section 10, 3rd Revised Page 1 of its Tariff No. 75 proposing to implement a "Universal WATS Access Line" (WAL) tariff for effect January 15, 1987. This tariff involves the assessment of outward wide area telephone service ("OUTWATS") usage charges for intra — local access transport area ("intraLATA") services. It enables NET to assess intraLATA/ OUTWATS usage charges for the use of NET facilities used to complete a jurisdictionally intraLATA call placed by an end user employing a jurisdictionally interstate WATS access line ("WAL") obtained under NET's tariff Federal Communications Commission ("FCC") No. 40.

The tariff was suspended pending investigation by Order No. 18,529 on January 7, 1987 in the captioned docket. A prehearing conference was scheduled for June 18, 1987 by Order No. 18,614 (72 NH PUC 100) pursuant to N.H. Admin. Code PUC § 203:05, to determine the scope and procedural schedule of the investigation. The Order further provided that intraLATA traffic

will be blocked from those carriers who do not have an approved certificate of public convenience and necessity and an effective intrastate tariff on file with the New Hampshire Public Utilities Commission and that until such time as this Commission shall decide otherwise, uncertified carriers may not directly bill customers for intraLATA usage of WATS or otherwise be an end user of WATS. Pursuant to Order No. 18,646 issued on April 20, 1987 (72 NH PUC 157), the Commission ordered that Nisi any interested party filed written comments and/or a request for an opportunity to be heard, the tariff in question was approved for effect as a temporary rate thirty days from the date of that order. Pursuant to a request of New England Telephone Company the prehearing conference was rescheduled for August 12, 1987.

On August 11, 1987 Burlington Telephone Company, a Vermont corporation with its principal place of business at the Southern Burlington Square, Suite 200, Burlington, Vermont, filed a Motion to Intervene pursuant to N.H. Rev. Stat. Ann. § 541-A:17 (supp. 1986) and N.H. Admin. Code PUC §203.02. At the prehearing conference, none of the parties objected to the

intervention of Burlington Telephone Company. The Commission granted the Motion to Intervene from the bench as long as the intervention would be in the interest of justice and would not impair the orderly and prompt conduct of the proceedings. The Commission also reserved its rights to limit the Intervenor's participation to designated issues in which the Intervenor has a particular interest or to limit the Intervenor's use of procedures.

The parties requested that the Commission continue the proceedings to allow the parties to hold a settlement meeting on August 18, 1987, the purpose of which was to limit the issues, determine the extent of the intervention of Burlington Telephone Company, and to attempt to settle. They agreed to produce either a settlement or a procedural schedule for submission to the Commission. The Commission granted the continuance from the bench and required the parties to recommend a hearing date if such date were necessary given the outcome of the settlement meeting.

On August 20, 1987 Burlington Telephone Company filed a letter indicating that it has reviewed NET's tariff filing and that it does not object to the filing. The Staff of the Commission has notified the Executive Director and Secretary that it does not object to the filing.

II. COMMISSION ANALYSIS

NET has proposed a WAL tariff that contains the same rate as its existing WATS tariff. Since there does not appear on the face of the proposed tariff to be any basis upon which to differentiate the rate under the WALS tariff from the rate under the existing WATS tariff, the Commission would have to determine that the existing WATS rate is unreasonable to determine that the proposed tariff is unreasonable. Based on information currently on record at the Commission, the existing rate is reasonable. The Commission will better be able to analyze whether these WATS tariffs cover the costs of service and are otherwise reasonable after the review taking place in Docket DR 85-182. Therefore, and since the parties do not object to the tariff, we find that the proposed tariff is just and reasonable and in the public interest.

Our Order will issue accordingly.

ORDER

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

ORDERED, that Part A, Section 10, 3rd Revised Page 1 of New England Telephone and Telegraph Company's Tariff No. 75 be, and hereby is, approved for effect 20 days from the issuance of this order; and it is

FURTHER ORDERED, that NET shall file tariffs in compliance with this Order.

By order of the Public Utilities Commission of New Hampshire this twenty-fifth day of August, 1987.

==========

NH.PUC*08/26/87*[60324]*72 NH PUC 370*Portsmouth Cellular Limited Partnership

[Go to End of 60324]

72 NH PUC 370

Re Portsmouth Cellular Limited Partnership

DE 87-126
Order No. 18,804

Re JHP Partnership

DE 87-136
Order No. 18,804

Re Starcellular

DE 87-137
Order No. 18,804

Re Manchester NECMA Limited Partnership

DE 87-154
Order No. 18,804

New Hampshire Public Utilities Commission

August 26, 1987

ORDER approving procedural schedule for consideration of petitions to operate as public utilities for the purpose of providing cellular mobile telephone service.

Page 370

PROCEDURE, § 13 — Scope of proceedings — Bifurcation.

[N.H.] Report on the bifurcation of a proceeding pertaining to cellular mobile

telecommunications service into (1) a generic proceeding to consider whether the commission had authority to regulate cellular service, and (2) a specific proceeding to consider whether applications for permission to commence business as a public utility, to construct and operate a cellular mobile telephone system, were in the public good.

APPEARANCES: Alan J. Bouffard, Esq. on behalf of Portsmouth Cellular Limited Partnership; Dom S. D'Ambruoso, Esq. on behalf of JHP Partnership; Thomas C. Platt, III, Esq. on behalf of Manchester NECMA Limited Partnership; Harold Carroll, Esq. on behalf of Starcellular; David Fazzone, Esq., Rita P. Campanile, Esq. and Edward R. Wall, Esq. on behalf of NYNEX Mobile Communications; Mary C.M. Hain, Esq. on behalf of the Staff of the Public Utilities Commission.

By the COMMISSION:

REPORT ON PREHEARING CONFERENCE

On June 29, 1987 the Portsmouth Cellular Limited Partnership applied pursuant to N.H. Rev. Stat. Ann. §374:22 (1984) for permission to commence business as a public utility or, in the alternative, for exemption from regulation by the Commission. The Commission issued an order of notice on July 8, 1987 stating that a prehearing conference would be held on August 11, 1987 to consider a bifurcation of the proceeding as follows:

Phase I — a generic proceeding to consider the Commission has authority to regulate cellular service, and

Phase II — a specific proceeding to consider whether the engaging in business or exercise of right, privilege, or franchise of Portsmouth Cellular Limited Partnership to construct and operate a cellular mobile telephone system in the State of New Hampshire is in the public good pursuant to N.H. Rev. Stat. Ann. §374:26 (1984).

On July 3, 1987 StarCellular (which is the registered tradename of Strafford Cellular, Inc., a New Hampshire corporation and a wholly owned subsidiary of Saco River Cellular Telephone Company, which in turn is a general partnership formed under the laws of the State of Maine between Saco River Cellular, Inc. (SRC) a Maine corporation and Telephone and Data Systems, Inc. (TDS) an Iowa corporation) applied pursuant to N.H. Rev. Stat. Ann. §374:22 (1984) for permission to commence business as a public utility. Starcellular holds a construction permit as the wireline carrier from the Federal Communications Commission (FCC) issued March 23, 1987 for the construction of a cellular mobile radio telecommunications system for the PortsmouthDover-Rochester, New Hampshire/Maine New England County Metropolitan Area (NECMA). The proposed service area for this service is the area covered by the construction permit.

On July 15, 1987 JHP Partnership, a California partnership to be registered as a foreign partnership in New Hampshire (the partners being Robert A. Pelissier, Jalal Hashtroudi and United States Cellular Corporation of New Hampshire) applied for a finding that the Commission has no jurisdiction over JHP's proposal to provide a cellular mobile radio telephone communication system or in the alternative pursuant to N.H. Rev. Stat. Ann. §374:22(1984) for

permission to commence business as a public utility. JHP Partnership holds a construction permit as the non-wireline carrier from the FCC issued October 27, 1986 for the construction of a cellular mobile radio telecommunications system for the ManchesterNashua, New Hampshire NECMA. The proposed service area for this service is the area covered by the construction permit.

The Manchester NECMA Limited Partnership petitioned for permission to the extent, if any, required under N.H. Rev. Stat.

Page 371

Ann. §§374:22 and 374:5 to commence construction, ownership, operation, and management of a cellular mobile radio telecommunications system.

The Manchester NECMA Limited Partnership ("MNLP") is a New Hampshire limited partnership. It is owned in sixty percent and forty percent equity interests by Contel Cellular Inc. (a Delaware Corporation) and NYNEX Mobile Communications Company (a Delaware corporation) respectively. Contel Cellular, Inc. is the sole general partner and NYNEX Mobile Communications Company is a limited partner. MNLP holds a construction permit as the wire-line carrier from the FCC issued September 16, 1986 for the construction of a cellular mobile radio telecommunication system for the Manchester-Nashua, New Hampshire NECMA. The proposed service area for this service is the area covered by the construction permit.

Pursuant to Order No. 18,778 in Docket DE 87-137 and Order No. 18,777 in Docket DE 87-136 (72 NH PUC 339) Starcellular and JHP Partnership were required to be mandatory parties in Phase I of Portsmouth Cellular Limited Partnership: Petition to Commence Business as a Public Utility. The prehearing conference was held on August 11, 1987.

All permitees who have been selected by the FCC to provide cellular service in the State of New Hampshire have made motions to intervene in this proceeding. NYNEX Mobile Communications Company also made a motion to intervene. These motions were granted at the prehearing conference.

Oral motions pro hac vice were also made by Alan Bouffard, Harold Carroll, David Fazzone, Rita Campanile, and Edward Wall at the prehearing conference. The Commission granted the motions from the bench.

At the prehearing conference all parties argued in favor of the bifurcation of the proceeding, that the generic proceeding should produce an order which is applicable to all of the parties, and agreed to the following prehearing schedules for all cellular dockets.

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

Portsmouth Cellular Limited Partnership DE 87-126

   August 25 — Testimony of Portsmouth
   August 25 — Memorandum of Law on Jurisdiction
   September 8 — Data Requests to Portsmouth
   September 15 — Data Responses of Portsmouth
   September 21 — Hearing on the Merits at 1:00 pm

Starcellular DE 87-137

   August 28 — Memorandum of Law on Jurisdiction
```

```
   September 4 — Testimony of Starcellular
   September 11 — Data Requests to Starcellular
   September 16 — Data Responses of Starcellular
   September 21 — Hearing on the Merits at 3:00 pm

JHP Partnership DE 87-136

   August 28 — Memorandum of Law on Jurisdiction
   September 18 — Testimony of JHP Partnership
   September 22 — Data Requests to JHP Partnership
   September 29 — Data Responses of JHP Partnership
   October 5 — Hearing on the Merits at 9:00 am


Manchester NECMA Limited Partnership DE 87-154

   August 28 — Memorandum of Law on Jurisdiction
   September 18 — Testimony of JHP Partnership
   September 22 — Data Requests to JHP Partnership
   September 29 — Data Responses of JHP Partnership
   October 5 — Hearing on the Merits at 2:00 pm
```

The Commission approves the proposed procedural schedules.

Our order will issue accordingly.

ORDER

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

ORDERED, that the parties' proposed procedural schedule is approved.

By order of the Public Utilities Commission of New Hampshire this twenty-sixth day of August, 1987.

==========

NH.PUC*08/31/87*[60325]*72 NH PUC 373*Public Service Company of New Hampshire

[Go to End of 60325]

72 NH PUC 373

Re Public Service Company of New Hampshire

DR 87-151
Supplemental Order No. 18,805

New Hampshire Public Utilities Commission

August 31, 1987

ORDER denying motions to dismiss, stay or modify the schedule of an emergency electric rate proceeding and, granting intervenor status.

---

1. RATES, § 635 — Emergency rates — Scope of proceeding — Effect of anti-CWIP statute — Electric utility.

[N.H.] Pursuant to state statute RSA 378:9, whenever the commission shall be of the opinion that an emergency exists, it may authorize any public utility temporarily to alter, amend or suspend any existing rate; accordingly, the commission has the authority and clear responsibility to address an electric utility's petition for emergency rates regardless of the results of a pending New Hampshire supreme court review of the applicability of RSA 378:30-a, which prohibits the inclusion of construction work in progress (CWIP) in rate base; the commission noted that the ruling of the supreme court would aid it in reaching a proper decision in the emergency rate proceeding. p. 375.

2. PARTIES, § 18 — Right to intervene — Emergency electric rate proceeding.

[N.H.] An electric cooperative was permitted to intervene in the emergency rate proceeding of an electric utility even though the cooperative makes no retail purchases from the utility and, as a wholesale customer of the utility, its rates are set by the Federal Energy Regulatory Commission; the commission found that the ability of the cooperative to maintain a continuing source of power from the utility could be influenced by the outcome of the emergency rate proceeding and that intervention was, therefore, warranted. p. 375.

3. RATES, § 630 — Emergency rates — Procedural questions — Denial of motions to dismiss — Electric utility.

[N.H.] In denying motions to dismiss, stay, or modify the procedural schedule for an emergency electric rate proceeding in which the utility claimed that emergency rates were needed to raise additional revenues to avoid bankruptcy, the commission found that (1) it had clear statutory authority to address the issue of emergency rates, (2) dismissing the proceeding would amount to prejudging the question of whether an emergency exists, and (3) staying the proceeding or modifying the procedural schedule would deny the commission the opportunity to address the possible emergency situation within a timeframe in which remedial action could be effective. p. 376.

Page 373

4. PROCEDURE, § 1 — Adjudicatory proceedings — Designation of staff advocates.

[N.H.] New Hampshire Administrative Rules Puc 203.15 (b) (2)a provides, in part, that the commission may designate an employee (or class of employees) as a staff advocate when the employee (or class of employees) will participate in an adjudicative proceeding in any way which makes likely a commitment to any particular result. p. 377.

5. RATES, § 635 — Emergency rates — Scope of proceeding — Designation of staff advocates — Electric utility.

[N.H.] A motion for designation of staff advocates in an emergency rate proceeding was denied as premature where no staff persons had indicated an intention to file testimony or otherwise present positions on the matters at issue. p. 377.

APPEARANCES: Martin L. Gross, Esquire for Public Service Company of New Hampshire;

Michael Holmes, Esquire for the Consumer Advocate; Robert C. Hinkley, Esquire for the Campaign for Ratepayers Rights; Ian Wilson for the Business and Industry Association; Mark Bennett, Esquire for the City of Nashua; J. P. Nadeau for the Town of Rye; Thomas Clark, Esquire for the City of Manchester; Paul VanMaldegehen, Esquire for the Department of Defense and the Federal Executive Agencies; Jeffrey J. Zellers, Esquire for the New Hampshire Electric Cooperative; Martin C. Rothfelder for Staff and for the Commission.

By the COMMISSION:

This docket was opened on August 5, 1987 pursuant to a petition by the Public Service Company of New Hampshire (PSNH) to alter existing rates on account of emergency circumstances, providing for an emergency surcharge which would, if granted, produce an overall estimated increase in annual revenues of $70,973,279, an increase of 15% based on sales for the 12 months ended December 31, 1986. The PSNH petition further requested the Commission to transfer to the New Hampshire Supreme Court the question of the constitutionality of New Hampshire's anti-CWIP law, RSA 378:30-a.

On August 11, 1987, the Commission issued a document entitled "Report Regarding Request for Transfer and Order No. 18,788" ordering that the Commission would reserve, certify and transfer the question of law that PSNH had requested the Commission to transfer to the Supreme Court, along with a second clarifying question. In its Report and Order, the Commission indicated that the PSNH question, if narrowly answered, could result in an answer which only addressed PSNH's rights to a hearing as opposed to its rights to substantive relief. The Commission's additional question requested an answer from the Supreme Court regarding PSNH's rights to substantive relief.

PSNH represented to the Commission that it filed the INTERLOCUTORY TRANSFER STATEMENT to the Supreme Court on August 13, 1987.

On August 20, 1987, the Commission issued an Order that set a prehearing conference on the emergency petition for August 27, 1987 at 10:00 a.m. The order of notice set forth the following procedural schedule:

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

September 4, 1987  Intervenor data request
  to PSNH

September 11, 1987  PSNH data responses

September 18, 1987  Intervenor testimony

September 25, 1987  PSNH data responses to
  intervenors

October 2, 1987 Intervenor data responses

October 5, 6, 7,
 8, 9, 1987  Hearings (at 10:00 am
  each day)
```

I. SCOPE

[1] PSNH, pursuant to RSA 378:7 & 9, requests immediate authorization to alter its rates by adding to the rates set forth in NHPUC No. 31 - Electricity, an emergency surcharge which will produce an overall increase in annual revenues of $70,973,279, an increase of 15% based on sales for the 12 months ended December 31, 1986. The requested revenues are alleged to be needed if PSNH is to meet interest payments and maturities on its public debt, and to provide for expansion of its facilities to meet customer demands for service. PSNH requests that the Commission establish a level of rates to restore its financial integrity consistent with the interests of customers, notwithstanding RSA 378:30-a, the so-called anti-CWIP statute.

Whenever the Commission shall be of the opinion that an emergency exists, it may authorize any public utility temporarily to alter, amend or suspend any existing rate, fare, price, classification or rule or regulation thereto. The Commission has the authority and the clear responsibility to address the issue of emergency rates under RSA 378:9.

The aforesaid responsibility does not rest on the interpretation of the anti-CWIP statute (RSA 378:30-a) but on the authority of RSA 378:9. Under that responsibility the Commission is obligated to determine the merits of the application filed and determine if it is in the public interest to grant the relief requested. The Commission certified to the Supreme Court certain questions of law seeking a determination as to whether the Commission was constrained by the anti-CWIP statute in reaching a determination as to whether emergency relief should be granted. Regardless of the Supreme Court's ruling, the Commission will have to examine the petitioner's request for emergency relief. With a Supreme Court ruling, the Commission will be aided in its efforts to make a proper ruling. However, the emergency request is before the Commission seeking additional revenues to avoid bankruptcy and such request would need to be addressed even if the Commission did not certify the question of law to the Court. Under the circumstances, it is necessary to fix a procedural schedule that will be expeditious in reaching a determination on the merits of the petition.

The Commission will address intervention and motions filed separately hereafter.

II. INTERVENTION

[2] Timely motions to intervene were filed by the Campaign for Ratepayers Rights, the Business and Industry Association, the Department of Defense, the New Hampshire Electric Cooperative (NHEC), the City of Nashua, the Town of Rye, and the City of Manchester. The Consumer Advocate, filed a notice of intervention.

There were no objections to any of the motions to intervene except for an objection by the Consumer Advocate to the NHEC motion. The Consumer Advocate argued that the NHEC should not be allowed to intervene in the proceedings because it makes no retail purchases from PSNH as it is a wholesale PSNH customer with its rates being set by the Federal Energy Regulatory Commission (FERC). The Consumer Advocate argued that the issues raised by NHEC in this proceeding would be more appropriately argued before the FERC.

The Commission grants all motions to intervene. NHEC's ability to maintain a continuing supply of power from PSNH, its primary source of power, could be influenced by the outcome of these proceedings. This interest justifies NHEC's participation. Pursuant to RSA 541 A:17 III (c), the intervention of the Town of Rye, the City of Manchester and the City of Nashua are hereby conditioned on their combining their presentations of evidence and arguments,

cross-examination, discovery and other participation in the proceedings. However, for good cause shown, the Commission may authorize these municipalities to proceed on an individual basis to the extent necessary to protect their individual interests.

III. MOTIONS TO DISMISS OR STAY THE PROCEEDINGS OR TO MODIFY THE PROCEDURAL SCHEDULE

[3] On August 27, 1987 the Consumer Advocate filed objections to the procedural schedule, a motion to dismiss and a motion to stay. The Campaign for Ratepayers Rights (CRR) filed an objection to the procedural schedule requesting that the proceedings be stayed pending response by the New Hampshire Supreme Court to the transferred questions. The Consumer Advocate argues that the petition should be dismissed because:

1. The Commission waived part of the prescribed notice period;

2. The proposed schedule provides inadequate time frames for residential ratepayers to respond and present evidence;

3. The issues of the prudency of PSNH's investment in Seabrook are not ripe for decision;

4. The rate case is redundant in that PSNH only recently completed a rate case in PUC Docket No. DR 86-122;

5. PSNH failed to raise the issues in this matter in said prior rate case, thereby waiving any constitutional rights it may have under the Federal and State constitutions, and this action is barred by the doctrine of res judicata in that these issues could have been litigated in the last rate case, DR 86-122, or in PUC Docket DR 83-398 regarding the application of the anti-CWIP statute to Pilgrim II recovery.

We will deny the Consumer Advocate's motion to dismiss. This Commission has clear authority to address the issue of emergency rates under N.H. Rev. Stat. Ann. 378:9 which provides:

Whenever the commission shall be of the opinion that an emergency exists, it may authorize any public utility temporarily to alter, amend or suspend any existing rate, fare, charge, price, classification or rule or regulation relating thereto.

The nature of an emergency obviously requires more immediate attention and shorter time frames for disposition than would a case in which an emergency is not alleged. The Commission has wide discretionary powers to decide whether a crisis is of sufficient severity to warrant relief, and, if so, the extent of the relief. Re Public Service Co. of New Hampshire, 97 N.H. 549, 84 A.2d 177 (1951). The necessity for emergency relief relates to the immediate needs of the utility. New England Teleph. & Teleg. Co. v. New Hampshire, 95 N.H. 58, 75 PUR NS 370, 57 A.2d 267 (1948). The Commission will consider the request in this emergency context.

N.H. Admin. Rules Puc 203.01, promulgated implementation of the notice provisions of RSA 541-A:16 III., requires 17 day notice of hearings. The proceeding at issue, however, was a prehearing conference. To the extent that Puc 203.01 should apply to prehearing conferences, which generally requires substantially less preparation than a hearing on the merits, the

Commission waived the requirement in part, for good cause shown, given the allegation of emergency circumstances, pursuant to N.H. Admin. Rules Puc 201.05.

The emergency alleged here was not raised previously in dockets DR 86-122 or DR 83-398. It appears from the petition and from representation by PSNH counsel during the prehearing conference, that this is not a Seabrook rate case. Although the Company asserts that the requested relief would be equivalent to including in rate base and providing a 15.28% return on 27% of their Seabrook I investment, the request, as understood by the Commission, relates to an alleged need for additional revenues to avoid bankruptcy. However, the relationship of this rate request to RSA 378:30-a shall be considered during the course of the proceedings along with any guidance the Commission may receive from the New Hampshire Supreme Court.

Granting the Consumer Advocate's motion to dismiss would amount to prejudging the question as to whether or not an emergency exists. If indeed the

Page 376

Commission finds that an emergency exists, the procedural schedule suggested by the Consumer Advocate extending the proceedings for one year or more could effectively negate the effect of RSA 378:9 and would deny the Commission the opportunity to address the possible emergency situation within a timeframe in which remedial action can be effective.

The Consumer Advocate also filed a motion to stay the proceedings on August 27, 1987, arguing that RSA 378:30-a is valid on its face until the Supreme Court holds otherwise and the Commission should refrain from proceeding further until the Supreme Court acts on the transferred questions regarding the application of RSA 378:30-a to this case. On August 27, 1987, the Campaign for Ratepayers Rights filed a similar pleading, entitled "Objection to Procedural Schedule Established by the Public Utilities Commission", citing concerns similar to those of the Consumer Advocate and an additional concern that the current schedule may require the various parties to spend considerable time, money and other resources in the case even though the Supreme Court might ultimately find that the requested relief is illegal. The Commission must also deny these motions. If indeed an emergency exists as alleged by PSNH, waiting until the Supreme Court responds to the transferred questions could leave insufficient time for the Commission to address any emergency which it finds in fact exists. Accordingly, we find that it is appropriate under the particular circumstances at bar to proceed according to the established procedural schedule pending response to the transferred questions or other guidance from the New Hampshire Supreme Court.

IV. CONSUMER ADVOCATE'S MOTION TO DESIGNATE STAFF ADVOCATES

[4, 5] Finally, the Consumer Advocate moved on August 27, 1987, that the Commission designate certain staff persons as staff advocates in this proceeding. N.H. Admin. Rules Puc 203.15 (b)(2)a provides:

The commission may designate an employee (or class of employees) as a staff advocate when the employee (or class of employees) will participate in an adjudicative proceeding in a way which makes likely a commitment to a particular result. This subsection is not applicable to all staff members who serve as witnesses at a hearing or provide expert advice to staff advocates.

No staff persons to date have filed testimony, indicated a position on the matters at issue, or indicated any intent to do so. Accordingly, the Consumer Advocate's motion to designate staff advocates is premature and we deny his motion without prejudice. This is not to say that if a member of the PUC staff files testimony that they will automatically be designated staff advocates. The rule explicitly is not applicable to all staff members who serve as witnesses at a hearing. However, if a party feels that the circumstances develop in this case that would justify invocation of this rule we will consider an appropriate motion at that time.

We will so Order.

SUPPLEMENTAL ORDER

For reasons cited in the foregoing Report, which is herein incorporated; it is

ORDERED, that the motions for intervention for full party status by the Department of Defense and the Federal Executive Agencies, the New Hampshire Electric Cooperative (NHEC), the Campaign for Ratepayers Rights, the City of Nashua, the City of Manchester and the Town of Rye are granted; and it is

FURTHER ORDERED, that the intervention of the City of Nashua, the City of Manchester and the Town of Rye is conditioned on their combining their presentations of evidence and argument, crossexamination, discovery and other participation in the proceedings except as otherwise ordered by the Commission on motion of the parties p

ursuant to RSA 541-A:17 III. (c).; and it is

FURTHER ORDERED, that the objections to the procedural schedule and motion to dismiss filed by the Consumer Advocate on August 27, 1987 is denied; and it is

FURTHER ORDERED, that the motion to stay filed by the Consumer Advocate on August 27, 1987 is denied; and it is

FURTHER ORDERED, that the objection to the procedural schedule filed on August 27, 1987 by the Campaign for Ratepayers Rights is hereby overruled and the relief requested therein denied; and it is

FURTHER ORDERED, that the motion filed by the Consumer Advocate on August 27, 1987, for designation of staff advocates is denied without prejudice; and it is

FURTHER ORDERED, that the procedural schedule established in the order of notice dated August 20, 1987 allows for reasonable timeframes which, based on the information now available to us, cannot be substantially extended without precluding effective remedial action should the alleged emergency ultimately be found to exist and should the requested relief be found to be lawful; and it is

FURTHER ORDERED, that said procedural schedule remains in effect unless and until otherwise ordered.

By order of the Public Utilities Commission of New Hampshire this thirty-first day of August, 1987.

72 NH PUC 378

Re Granite State Telephone, Inc.

DR 86-297
Order No. 18,806

New Hampshire Public Utilities Commission

September 1, 1987

ORDER setting the procedural schedule for a telephone rate case and denying a request to make existing rates temporary.

RATES, § 649 — Procedure — Hearing and notice requirements — Request for temporary rates — Local exchange telephone carrier.

[N.H.] A request by a local exchange telephone carrier to make existing rates temporary pending the final resolution of its rate case was denied because there had been no public notice given of the intent to establish temporary rates; the question of temporary rates was deferred for consideration in a temporary rate hearing that would follow the issuance of a published notice.

APPEARANCES: Frederick J. Coolbroth, Esq. of Devine, Milimet, Stahl & Branch on behalf of Granite State Telephone, Inc.; Mary C.M. Hain, Esq. on behalf of the New Hampshire Public Utilities Commission Staff.

By the COMMISSION:

REPORT ON THE HEARING ON THE MOTION TO DISMISS

I. Procedural History

Granite State Telephone, Inc. "Granite State" or "Company") filed revised tariff pages on March 16, 1987 for effect April 16, 1987. Such tariff pages incorporated a proposed increase in rates. The Commission suspended the tariff pages by Order No. 18,634 issued April 10, 1987.

After review of the Company's filings the

Staff filed a motion to dismiss on June 15, 1987. On July 2, 1987, Granite State filed an objection to the Staff's motion to dismiss. By an Order of Notice dated July 27, 1987 the

Commission scheduled a hearing for August 26, 1987 on the motion and the objection. On the day of the hearing the Commission noted that several letters had been filed by the public concerning the rate increase request. A letter from Representative Richard D. Benton was read into the record.

II. Positions of the Parties

On the date of the hearing on the motion to dismiss and the objection to the motion to dismiss the Company filed an updated revenue requirement calculation based on a 1986 test year. The Company and the Staff submitted an oral stipulation as follows.

1. Granite State agreed to base their request for a rate increase on the revenue requirement calculated based on a 1986 test year.

2. Granite State further agreed to file both jurisdictionally separated and combined data although they are requesting rates based on the jurisdictionally separated data.

3. The Company and the Staff agreed to make the existing rates temporary.

4. The Company agreed to use combined data and a 34 percent federal income tax rate for purposes of negotiating with the Staff for temporary rates.

5. The parties agreed that the Staff's motion to dismiss would be continued.

6. The Company agreed to a thirty (30) day extension of the date that it could put rates into effect under bond pursuant to N.H. Rev. Stat. Ann. §378:6 III (1984).

The parties also agreed to and recommended the following procedural schedule:

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

September 4, 1987 — revised testimony of
    Granite State Telephone,
    Inc. is due

September 25, 1987 — Staff's data requests of
    Granite State Telephone,
    Inc. are due


October 16, 1987 — Company's responses to the
    Staff's data requests are
    due

October 23, 1987 — Staff's data requests, Set
    No. 2 are due

October 30, 1987 — Company's responses to the
    Set No. 2 of data requests
    are due

November 16, 1987 — Staff's testimony is due

November 25, 1987 — Company's data requests of
    the Staff are due

December 7, 1987 — Staff's responses to the
    Company's data requests are
    due

December 15, 1987 — Negotiation conference to
    attempt to limit the issues
    and settle issues
```


The parties also recommended a September 18, 1987 date for a hearing on temporary rates. The Company agreed to file temporary tariffs on August 28, 1987 for effect on September 25, 1987. The Company requested an expedited schedule with respect to temporary rates so that the rates could go into effect on September 25, 1987, the date on which new extended areas service tariffs have been ordered to go into effect.

III. Commission Analysis

The proposed procedural schedule appears to allow adequate time to resolve the case within the constraints of RSA 378:61. The agreement of the parties seems to be in the best interest of the public and facilitates a final decision in this case; however, the Commission does not agree that the existing rates should be made temporary at this time because there has been no public notice given of these rates. Therefore, the question of temporary rates will be deferred to the temporary rate hearing scheduled for September 21, 1987. Appropriate notice of the temporary rate hearings shall be published no later than September 3 and September 8, 1987.

Our order will issue accordingly.

ORDER

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

ORDERED, that the proposed procedural schedule is approved; and it is

FURTHER ORDERED, that the oral stipulation of the parties is approved except that existing rates will not be made temporary at this time.

By order of the Public Utilities Commission of New Hampshire this first day of September, 1987.

==========

NH.PUC*09/01/87*[60327]*72 NH PUC 380*Southern New Hampshire Water Company, Inc.

[Go to End of 60327]

72 NH PUC 380

Re Southern New Hampshire Water Company, Inc.

DE 86-230
Second Supplemental Order No. 18,807

New Hampshire Public Utilities Commission

September 1, 1987

ORDER amending a prior order such that a water utility would not be assigned any portion of a disputed franchise area.

SERVICE, § 210 — Water — Service to disputed franchise area.

[N.H.] An order requiring Southern New Hampshire Water Company, Inc., to extend service to a disputed franchise area in the event that a competing water utility failed to petition to serve the area was amended such that Southern would not be assigned any portion of the disputed area; (the competing utility had filed actions designed to block Southern from providing service to the area while avoiding responsibility to serve the area itself and, Southern, despite the fact that it had originally petitioned to serve the area, had indicated that it did not desire to serve the area.)

By the COMMISSION:*(100)

SUPPLEMENTAL ORDER

Page 380

WHEREAS, in Order No. 18,760, this Commission approved the conditional withdrawal of the Southern New Hampshire Water Company (Southern) petition to serve in certain disputed areas in the Town of Londonderry as shown on maps on file at the Commission and as described in its Reports in this docket (72 NH PUC 309); and

WHEREAS, the conditional withdrawal provided that if a petition by Manchester Water Works (MWW) to serve the designated disputed areas was not filed within 20 days of the date of Order No. 18,760, that Southern would be assigned the franchise to these areas; and

WHEREAS, a Motion for Rehearing filed on August 3, 1987, by MWW moves that the Commission stay that portion of Order No. 18,760 which assigned the disputed franchise areas to Southern and hold additional hearings; and

WHEREAS, a Motion filed on August 3, 1987, by Southern seeks to amend its petition for service to the disputed areas and alleges a Commission mistake of fact; and

WHEREAS, after review and consideration this Commission is of the opinion that it made no mistake of fact and that Southern's petition for this area was before it when it issued Order No. 18,760; and

WHEREAS, it now appears that Southern desires not to carry out its duties to provide safe and adequate service to the disputed area that it petitioned for; and

WHEREAS, MWW's filings and actions herein are designed to block Southern's service to this area, but avoids taking on the responsibility of serving this area itself; and

WHEREAS, the Commission finds the actions of both Southern and MWW inappropriate for utilities in the business of providing public service; and

WHEREAS, the Commission finds Southern's actions make a compelling case for not awarding them the disputed area; it is hereby

ORDERED, that the Commission's Supplemental Order No. 18,760 is hereby amended such that Southern is not and shall not be assigned any portion of the disputed area as a result of this docket; and it is

FURTHER ORDERED, that Southern shall create and maintain a record of all expenses and time related to this proceeding; and it is

FURTHER ORDERED, that said records shall be maintained until after the conclusion of its next general rate case; and it is

FURTHER ORDERED, that further hearings or other action in this docket is unwarranted and that requests for such actions by MWW are denied.

By order of the Public Utilities Commission of New Hampshire this first day of September, 1987.

FOOTNOTE

*Commissioner Linda G. Bisson did not participate in this decision.

==========

NH.PUC*09/01/87*[60328]*72 NH PUC 381*Concord Natural Gas Corporation

[Go to End of 60328]

72 NH PUC 381

Re Concord Natural Gas Corporation

DR 86-292
Order No. 18,809

New Hampshire Public Utilities Commission

September 1, 1987

ORDER approving, in part, and rejecting, in part, a stipulated rate increase for a gas distribution utility.

RATES, § 386 — Natural gas — Rate design — Commercial and industrial rates — Stipulated change in rate design.

[N.H.] In a gas rate proceeding, the commission rejected a stipulated change in gas rate design that would have discontinued the existence of separate commercial and industrial rates for heating and for general purposes; in the interest of rate stability, any change in the rate design for commercial and industrial rates was deferred,

Page 381

pending a decision by the commission in a generic investigation of the cost of gas.

APPEARANCES: David W. Marshall, Esq. of Orr and Reno for Concord Natural Gas Corporation; Larry Eckhaus, Esq. on behalf of the Consumer Advocate; Martin C. Rothfelder, Esq. on behalf of the New Hampshire Public Utilities Commission Staff.

By the COMMISSION:

REPORT

I. Procedural History

On January 13, 1987, Concord Natural Gas Corporation (Company) filed revised tariff pages designed to increase gross annual revenues by $524,624 net of the cost of gas for an overall annual 6.54 percent increase to be effective February 13, 1987. On January 16, 1987 the Company filed a petition for temporary rates pursuant to N.H. Rev. Stat. Ann. §378:27 (1984). The petition for temporary rates requested that the Company be allowed to implement rates designed to collect an additional amount of $465,605 effective with bills rendered on and after February 13, 1987. The Commission suspended the effective dates of the proposed tariffs by Order No. 18,570 date issued February 11, 1987. This Order also scheduled a hearing on the temporary rates on March 17, 1987. On March 7, 1987 the Staff filed an agreement between the Company and the Staff recommending that the Commission authorize temporary rates at the current permanent rate level as a disposition of the petition for temporary rates. By Order No. 18,607 issued March 19, 1987 (72 NH PUC 93), the Commission ordered that Concord Natural Gas Corporation was authorized to file and implement temporary rates for service rendered on and after March 19, 1987 which set temporary rates at current permanent rate levels.

On March 20, 1987, the Staff filed a recommended procedural schedule agreed to by the parties by Second Supplemental Order No. 18,609, issued March 24, 1987 the Commission approved the procedural schedule. The approved procedural schedule set August 18 through August 21, 1987 as the dates for the Hearings on the Merits.

On March 24, 1987, the Commission issued Third Supplemental Order No. 18,611 correcting the Second Supplemental Order No. 18,609. Order No. 18,611 noted that Order No. 18,609 should have indicated that temporary rates applied to bills rendered on and after March 19, 1987 as opposed to the language in 18,607, which stated that temporary rates applied to service rendered on or after March 19, 1987. Order No. 18,611 acted to amend Supplemental Order No. 18,607.

Concord Natural Gas Corporation submitted an original page number 26 to Gas Tariff NHPUC No. 13 which would allow the Company employees to receive discounts on their gas purchases. The Commission rejected this tariff in Order No. 18,692, issued May 29, 1987 (72 NH PUC 208).

On August 14, 1987 the Staff and the Company filed a Stipulation Agreement dated August 14, 1987. The Stipulation Agreement was designed to dispose of all issues between the Staff and Concord Natural Gas Corporation.

II. Positions of the Parties

The Company and Staff entered into a settlement designed to dispose of all aspects of this

case. The Consumer Advocate contested one rate design issue in the settlement, and stated that the revenue requirement of the settlement agreement is not unreasonable. For purposes of discussing the settlement agreement and matters at issue in this proceeding, the section below is divided among the Revenue Deficiency, Recoupment of Temporary Rate Deficiency, and Rate Design (the only contested issue).

Revenue Deficiency

For the purpose of calculating the revenue deficiency the parties stipulated that the rate of return would be calculated using a cost of common equity of 12.56 percent, a cost of preferred stock of 5.50 percent, a cost of long term debt of 9.34 percent, and a cost of short term debt of 8.75 percent, producing an overall weighted cost of capital of 10.85 percent, based upon the Company's capital structure as of March 31, 1987, proformed for certain known changes to common equity and long term debt and with the short term debt level related to the level of cash working capital.

The stipulated net utility operating income is $395,868 utilizing the test year ending September 30, 1986 proformed for the following:

1. weather normalization;

2. vehicle commuting expense;

3. electricity expense;

4. the change in federal corporate income tax (Tax Reform Act of 1986);

5. an allocation of computer installation expense from Energy North, Inc. (the Company's parent) to Concord Natural Gas Corporation;

6. pro forma interest expense;

7. an increase in payroll expense realized no more then twelve months beyond the end of the test year;

8. elimination of non-requiring consulting expenses; and

9. adjustments to pension costs.

The parties further agreed that the rate base will be an average rate base, computed utilizing thirteen (13) monthly balances, of $6,279,175. The rate base calculations includes the working capital allowance as calculated in Settlement Exhibit 5-B contained in Settlement Exhibit 9-B.

Recoupment of Temporary Rate Deficiency

The Staff and the Company agreed that the permanent tariffs would be based on the 34 percent tax rate. The tax rate used to calculate the under recovery that occurred during the period of temporary rates, would be applied in two levels to reflect the change in the federal tax laws under the Tax Reform Act of 1986 (TRA). From March 19, 1987, the effective date of temporary rates through and including June 30, 1987, the 46 percent tax rate was used pursuant to the tax laws in effect prior to TRA. From July 1, 1987 through August 31, 1987, the period temporary rates were in effect after TRA became effective, a 34 percent tax rate was used. These tax rates

would result in an annualized increase of $527,082 and $394,259 base operating revenues for the 46 percent tax rate portion and 34 percent tax rate portion of the temporary rate period, respectively.

The agreement provided for a recoupment of revenue deficiencies during the temporary rate period (March 19, 1987 — August 31, 1987) as follows:

The Company shall recoup the difference between (a) the amount billed for gas by the Company during the period from March 19, 1987 to June 30, 1987, inclu- sive, under the temporary rates established in the earlier Commission proceeding and (b) the amount the Company would have billed for gas during that period had permanent rates been in effect throughout that period designed to produce (on the basis of sales billed during the test year) $527,082 per annum more than the temporary rates for March 19, 1987 through June 30, 1987.

From July 1, 1987 to September 1, 1987 the Company shall recoup the difference between (a) the amount actually billed for gas by the Company during the period under the temporary rates established including July 1, 1987 to the effective date of permanent rates (September 1, 1987) and

Page 383

(b) the amount the Company would have billed for gas during that period had the permanent rates been in effect for billings throughout that period. The parties also agreed that the Company could recover regulatory expense associated with the present proceeding in addition to the aggregate amount of the recoupment discussed above.

The recoupment rate surcharge shall be designed to recoup all amounts specified above over a twelve (12) month period in accordance with the same methodology reflected in the September 30, 1986 filing made by the Manchester Gas Company in Docket DR 85-214. The Company shall file appropriate surcharge tariffs and supporting information on or before September 15, 1987. The surcharge shall be effective for all bills rendered on and after November 1, 1987.

Rate Design

The parties agreed that the increase in annual basic revenues stipulated would be apportioned among all firm customer classes and charges on a prorated basis subject to a recommended change in the commercial and industrial heating rate to eliminate the provision entitling commercial and industrial customers with general use of over 500 therms per month to be billed for all gas use at the commercial and industrial heating rate (which is lower than the commercial and industrial general rate) and making the CIH rate applicable to all commercial and industrial use of gas whether for heating or for general purposes and discontinuing the CIG rate. The Staff and the Company recommended this change since the Company is not currently complying with the tariff in that the Company does not separately meter CIH and CIG usage. This recommended change in the tariff would also include a change in the CIH rate to provide for a separate customer charge for each meter located on a commercial or industrial customers premises.

The Consumer Advocate argued that the Commission should continue the existence of a separate CIG and a separate CIH rate. He argued that the difference for the customer moving from the CIG rate to the CIH rate is a substantial decrease as compared with a permanent rate

increase of less than 5 percent for all other customers. In addition the Consumer Advocate pointed out that the residential general rate was much higher than the residential heating rate. He also pointed out that the residential heating rate contained a clause similar to the offending phrase in the CIH rate. He recommended that the current offending phrase in the CIH tariff be replaced with the following "and for other purposes."

III. Commission Analysis

The Commission finds that the revenue requirement as developed above is supported by the evidence and is reasonable. Therefore, we accept it for resolution of this particular docket in accordance with the agreement.

The proposed increase ($394,259) will be effective as of September 1, 1987, pursuant to the stipulation. The Company shall file a proposed calculation of recoupment for the loss of revenue during the period temporary rates were in effect (March 19, 1987 through August 31, 1987). This calculation will adopt the stipulated bifurcated increase, computing rates at an annualized increase in revenue of $527,082 for the period of March 19, 1987 through June 30, 1987 and changing to an annualized increase in revenues of $394,259 for the period July 1, 1987 through August 31, 1987.

We do not approve of the change in the rate design as recommended in the stipulation. In the interest of rate stability we will defer any change in the rate design for commercial and industrial rates until we have rendered a decision in the generic cost of gas docket (Generic Gas Investigation, Docket DE 86-208). We, therefore, accept the proposal of the Consumer Advocate that the clauses on First Revised Page No. 15A, which read as follows: "(Gas used for these purposes ... exceeds 500 therms per

Page 384

month.)" be amended to read as follows: "and for other purposes."

We will, however, require the Company to provide in its rates for a separate customer charge for each meter located on a commercial or industrial customer's premises. The additional revenues resulting from this change are to be used to offset the general rate increase to all customer classes.

ORDER

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

ORDERED, that the proposed stipulation of the Staff and Concord Natural Gas Corporation is approved except the portion which would effect a change in the Company's rate design; and it is

FURTHER ORDERED, that the Company file the following:

a.) revised tariff pages reflecting the increase and bearing an effective date of all bills rendered on or after September 1, 1987;

b.) a detailed calculation of the amounts over-collected by the Company to permanent increase being smaller than the temporary rate increase granted by the Commission in Report and Order No. 18,607 issued on March 19, 1987 (72 NH PUC 93);

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 over-collected and its rate case expenses.

By order of the Public Utilities Commission of New Hampshire this first day of September, 1987.

==========

NH.PUC*09/02/87*[60329]*72 NH PUC 385*Connecticut Valley Electric Company, Inc.

[Go to End of 60329]

72 NH PUC 385

Re Connecticut Valley Electric Company, Inc.

Additional party: Joy Technologies, Inc.

DR 87-158
Order No. 18,811

New Hampshire Public Utilities Commission

September 2, 1987

APPROVAL of a special contract, providing for a reduced off-peak demand rate, between an electric utility and a retail customer.

RATES, § 327 — Electricity — Demand and load — Off-peak use — Special contract rate.

[N.H.] A special contract between an electric utility and a retail customer, providing for a reduced off-peak demand rate, was approved because (1) the purchased power cost adjustment would be reduced to reflect capacity cost savings, including interest and franchise tax, expected to be achieved through the contract; (2) the expected revenue loss to the utility, resulting from the reduced contract rate, would offset recent excess earnings and would not be charged to other ratepayers; (3) the utility recognized that load management rates should be considered for all retail customers and was committed to filing rate design proposals for all rates; and (4) the commission found that special circumstances existed, rendering the terms and conditions of the contract just and consistent with the public interest.

By the COMMISSION:

ORDER

WHEREAS, on March 31, 1987 Connecticut Valley Electric Company (Company) submitted proposed revisions to its Electric Service Tariff N.H.P.U.C. No. 4 — Electricity which

incorporates an off-peak demand feature in the Company's tariff rates (DR 87-55); and

WHEREAS, on August 19, 1987 the

Company withdrew this proposal (DR 87-55) and instead submitted the current proposed Special Contract No. N.H.P.U.C.-6 with Joy Technologies, Inc. (Joy) which provides for a reduced off-peak demand rate for Joy; and

WHEREAS, on August 25, 1987, the Company submitted supplemental testimony in DR 87-149 proposing to further reduce the Purchased Power Cost Adjustment ("PPCA") contingent upon Commission approval of the Special Contract with Joy; and

WHEREAS, the above noted reduction in the "PPCA" of $290,144 reflects the capacity cost savings, including interest and franchise tax, expected to be achieved through the special contract No. N.H.P.U.C.-6 with Joy Technologies, Inc.; and

WHEREAS, the expected revenue loss to the Company of approximately $140,000 resulting from the reduced Special Contract rate with Joy serves to offset the Company's recent excess earnings and will not be charged to the Company's other ratepayers; and

WHEREAS, the Company recognizes that load management rates should be considered for all of the Company's retail customers and therefore commits to filing rate design proposals for all of its rates no later than September 1, 1988; and

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

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

By order of the Public Utilities Commission of New Hampshire this second day of September, 1987.

==========

NH.PUC*09/08/87*[60330]*72 NH PUC 386*Hanover Water Works

[Go to End of 60330]

72 NH PUC 386

Re Hanover Water Works

DR 86-50
Second Supplemental Order No. 18,817

New Hampshire Public Utilities Commission

September 8, 1987

APPROVAL of rate case expense incurred by a water utility.

EXPENSES, § 89 — Rate case expense — Water utility.

[N.H.] A rate case expense incurred by a water utility was approved, based on a finding of reasonableness and satisfactory responses by the utility to inquiries in the commission's investigation of the expense.

By the COMMISSION:*(101)

SUPPLEMENTAL ORDER

WHEREAS, on December 9, 1986 the Commission issued its Order No. 18,501 approving an increase in rates for Hanover Water Works (71 NH PUC 775); and

WHEREAS, in said order the Commission also required Hanover Water Works to "submit further detail of its rate case expenses in accordance with (the order's) foregoing report"; and

WHEREAS, on June 30, 1987 Hanover Water Works satisfactorily responded to the Commission inquiries into rate case expense, concluding the Commissions investigation of the matter; and

WHEREAS, the Commission finds that the rate case expense incurred in the instant proceedings by Hanover Water Works is reasonable; it is therefore

ORDERED, that pursuant to the stipulation approved by the Commission in Order No. 18,501, Hanover Water Works rate case expense of $13,994.99 updated as of June 25, 1987, shall be, and hereby is, approved; and it is

FURTHER ORDERED, that Hanover Water Works file a tariff page calculating a surcharge in accordance with the Stipulation approved in Order No. 18,501 effective on all bills rendered on or after September 1, 1987.

By order of the Public Utilities Commission of New Hampshire this eighth day of September, 1987.

FOOTNOTES

*Commissioner Linda G. Bisson did not participate in this decision.

==========

Re Warner Cable Communications, Inc.

DE 87-141
First Supplemental Order No. 18,819
New Hampshire Public Utilities Commission
September 8, 1987

IMPOSITION of additional conditions on the license granted for operation and maintenance of an antenna facility.

CERTIFICATES, § 73 — Grant or refusal — Restrictions and conditions — Cable facilities.

[N.H.] Additional conditions were imposed on the license granted to two cable companies for the operation and maintenance of an antenna and associated facilities: the companies were ordered (1) to install a gate and boulder barricade sufficient to prevent unauthorized vehicular access to the site; (2) to make all reasonable efforts to maintain the access road leading to the antenna facility in a condition suitable for their needs and for access by forest fire fighting equipment; and (3) to maintain the antenna facilities in a clean and presentable manner with due consideration to aesthetics.

By the COMMISSION:*(102)

SUPPLEMENTAL ORDER

WHEREAS, the Public Utilities Commission issued Order No. 18,783 granting license NISI to Warner Cable Communications Inc. and Cheshire Cable Corporation (the companies) for operation and maintenance of an antenna and associated facilities on Mt. Wantastiquet (72 NH PUC 345); and

WHEREAS, all persons interested in responding to the companies, petition were given until August 21, 1987 to submit their comments; and

WHEREAS, the New Hampshire Department of Resources and Economic Development responded with comments received on August 18, 1987; and

WHEREAS, the Commission finds that the comments have merit and that additional conditions on the license would be in the public good; it is therefore

ORDERED, that upon receipt of a timely petition opposing automatic renewal of the license after any five year period, from an affected party including but not limited to the State of New Hampshire Department of Resources and Economic Development or their successors, the Public Utilities Commission will notify the companies of its intent to withhold renewal of the license pending a review of then current circumstances; providing, however, that renewal will not be unreasonably withheld; and it is

FURTHER ORDERED, that the companies install and maintain a gate (or gates) and boulder barricade sufficient to prevent unauthorized vehicular access to the mountain and that keys to the

gate be provided to the local fire and police departments and the NH Division of Forests and Lands; and it is

FURTHER ORDERED, that the company make all reasonable efforts to maintain the access road leading to the antenna facility in a condition suitable for their needs and for access by forest fire fighting equipment (4 wheel drive vehicles); and it is

FURTHER ORDERED, that the antenna facilities be maintained in a clean and

Page 387

presentable manner with due consideration to mountain top aesthetics; and it is

FURTHER ORDERED, that use of the facilities by or lease to other entities will require approval of the Public Utilities Commission following consultation with the Department of Resources and Economic Development.

By order of the Public Utilities Commission of New Hampshire this eighth day of September, 1987.

FOOTNOTES

*Commissioner Linda G. Bisson did not participate in this decision.

==========

[Go to End of 60332]

72 NH PUC 388

Re Continental Telephone Company of New Hampshire

DR 87-157
Order No. 18,825

New Hampshire Public Utilities Commission

September 14, 1987

ORDER approving revised tariffs pertaining to service reconnection charges of a local exchange telephone carrier.

RATES, § 312 — Reconnection charges — Telephone service — Tariff revisions.

[N.H.] The commission approved tariff revisions proposed by a local exchange telephone carrier to correct service connection charges, because the revisions better reflected the current methods and costs of disconnection of service and were in the public good.

By the COMMISSION:

ORDER

WHEREAS, Continental Telephone Company of New Hampshire (Contel-NH) on August 14, 1987 filed with the Commis- sion Section 12, 6th Revised Sheet 4 of its tariff P.U.C. New Hampshire No. 11, proposing to correct Service Connection Charges, §III-J-1; and

WHEREAS, the correction substitutes the sentence that "a secondary service order and a central office charge will apply for restoration of service following suspension for nonpayment" for the language that "a secondary service order and a travel charge will apply for restoration of service following suspension for nonpayment" (emphasis added); and

WHEREAS, the revision further eliminates §III-J-2, which established a secondary service order charge and a travel charge in the no longer extant circumstances of a company representative being sent to the customer premises in order to effect a disconnection of service; and

WHEREAS, after consultation with Staff, on August 28, 1987, Contel-NH filed Section 2, Third Revised Sheet 8 of its tariff P.U.C. New Hampshire No. 11, to eliminate §13-C (Discontinuance of Service for Non-payment) of its General Regulations, which also addressed the no longer extant circumstances of customer premises visits in the case of disconnection; and

WHEREAS, Section 2, Third Revised Sheet 8 incorporates incorrect issuance and effective dates; and

WHEREAS, such revisions better reflect the current methods of disconnection of service and the costs thereof; and

WHEREAS, the revisions are found to be in the public good; it is therefore

ORDERED, that Section 12, 6th Revised Sheet 4 of the Contel tariff No. 11, be, and hereby is, approved in effect as of September 17, 1987; and it is

FURTHER ORDERED, that Section 2, Third Revised Sheet 8 be, and hereby is rejected, and that Contel file a compliance tariff of said page bearing an issuance date of August 18, 1987 and an effective date of September 17, 1987, and annotated with the number of this Order.

Page 388

By order of the Public Utilities Commission of New Hampshire this fourteenth day of September, 1987.

==========

NH.PUC*09/14/87*[60333]*72 NH PUC 389*Keene Gas Corporation

[Go to End of 60333]

Re Keene Gas Corporation

DE 87-163
Order No. 18,826

New Hampshire Public Utilities Commission

September 14, 1987

ORDER nisi authorizing the abandonment of a gas distribution system and franchise area.

SERVICE, § 254 — Abandonment and substitution — Propane gas service — Factors affecting grant of petition for abandonment.

[N.H.] A propane gas distributor was authorized to abandon a local distribution system and franchise area where (1) the propane storage facilities of the distribution system were located on property not owned, leased or subject to any easement to the distributor and had been required to be removed, and (2) the distributor agreed to provide alternate service to all existing customers at no price disadvantage.

By the COMMISSION:

ORDER

WHEREAS, Keene Gas Corporation (Keene) has petitioned the Commission for abandonment of their franchise for the Town of Troy, N.H. by letter dated August 20, 1987; and

WHEREAS, Keene is now serving 10 customers in Troy from a local propane distribution system originally designed to serve up to 60 units in the Troy Development; and

WHEREAS, Keene has learned that the propane storage facilities of this distribution system are located on property not owned, leased or subject to any easement to the company and that they must be removed by September 25, 1987; and

WHEREAS, Keene has agreed to serve the current customers, on a metered basis from individual tanks (aboveground or underground at the customer's preference) at no gas price disadvantage or cost of installation; and

WHEREAS, Keene has stated that they have notified the involved customers of its intent and has received no objections; and

WHEREAS; the customers located in Troy, N.H. and the public should have the opportunity to comment to this commission on the proposed abandonment; it is hereby

ORDERED; that the petitioner should provide a copy of this order to each of the present customers in Troy by registered mail; and it is

FURTHER ORDERED; that the petitioner should notify all other persons by causing a copy of this order to be published once in a newspaper having general circulation in the service area of Keene Gas Co., such publication to be no later than September 28, 1987, said publication to be

documented by an affidavit to be filed with this office on or before October 5, 1987; and it is

FURTHER ORDERED; that any party wishing to comment on the proposed abandonment may do so by contacting this Commission before October 5, 1987; and it is

FURTHER ORDERED; NISI, that the petition of Keene Gas Co. for abandonment of its gas distribution system in Troy, N.H. and its franchise area in Troy, N.H. is approved; and it is

FURTHER ORDERED; that the company provide alternate service to all customers prior to abandonment at no cost of installation; and it is

FURTHER ORDERED; that gas be provided to these customers at the current rate with no increase during the 1987-88 winter heating season; and it is

FURTHER ORDERED; that this order

Page 389

shall take effect on October 12, 1987 unless an interested party files a request for hearing or unless the Commission orders otherwise prior to that date; and it is

FURTHER ORDERED; that the company revise original page 3 of tariff NHPUC No. 1 — Gas to reflect elimination; of Troy from its service area and provide the required number of copies to this Commission.

By order of the Public Utilities Commission of New Hampshire this fourteenth day of September, 1987.

==========

NH.PUC*09/14/87*[60335]*72 NH PUC 390*Public Service Company of New Hampshire

[Go to End of 60335]

72 NH PUC 390

Re Public Service Company of New Hampshire

DR 87-151
Third Supplemental Order No. 18,827
New Hampshire Public Utilities Commission
September 14, 1987

ORDER denying a motion for rehearing of an order setting an expedited procedural schedule for an emergency electric rate case.

RATES, § 630 — Emergency rates — Procedural requirements — Expedited schedules.

[N.H.] A motion for rehearing of an order that amended the procedural schedule for an emergency electric rate case by adding an expedited hearing to address issues related to

construction work in progress in the Seabrook nuclear generating station was denied notwithstanding the claim that the order violated procedural due process and statutory notice requirements; in support of its denial, the commission found that (1) it had a statutory obligation to promptly determine whether an emergency exists and if so to provide adequate relief, and (2) the public had been more than adequately notified of the issues in the case; (the expedited hearing had been scheduled in response to a decision by the New Hampshire Supreme Court to defer consideration of transferred questions of law concerning the inclusion of construction work in progress in rate base until the commission addressed limited issues concerning Seabrook investment, thereby requiring the commission to promptly convene a hearing to address those issues before continuing with the previously established procedural schedule.

By the COMMISSION:

REPORT REGARDING CONSUMER ADVOCATE'S MOTION FOR REHEARING

On September 4, 1987, the Consumer Advocate filed a motion for rehearing of Second Supplemental Order No. 18,812 alleging that said order is unlawful and unreasonable in that it violates the Fifth and Fourteenth Amendments to the United States Constitution in part I, Article 15 of the New Hampshire Constitution.

The Commission issued Order No. 18,812 on September 3, 1987 setting forth the following procedural schedule:

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

September 9, 1987 PSNH direct testimony to be
     filed

 September 14, 1987 Direct testimony, if any, of
     intervenors, Consumer
     Advocate and staff to be
     filed.

 September 16, 1987 Hearing to develop a record
     to allow the commission to
     make findings of basic facts
     regarding the two issues set
     forth by the Supreme Court as
     remanded September 2, 1987.
```

Page 390

In said Order, the commission also required that PSNH expedite its responses to data requests by staff and intervenors relating to the issues in question.

This procedural schedule was established in response to a New Hampshire Supreme Court Order dated September 2, 1987, in which the Court deferred consideration of questions of law previously transferred to the Court pursuant to RSA 365:20, as part of these proceedings, until the commission has addressed the following issues with findings of basic facts:

a. The claimed, need to include some of the company's investment in the Seabrook I reactor in the company's rate base in order to obtain the cash required by the end of 1987 to make

interest payments as they come due, to pay off existing debt as it matures and to pay for the expansion of services to customers.

b. The date upon which the commission first authorized inclusion of such investment in the rate base, and the amounts of the company's investment prior to that date, between that date and the effective date of §30-a, and thereafter.

Re Public Service Company of New Hampshire, No. 87-311, slip op. at 2 (Sept. 2, 1987).

In its order, the Court indicated that the "...findings can be made expeditiously after a hearing promptly convened and limited to the issues in question." Id. at 3 (emphasis added).

The Consumer Advocate cites general principals of due process law and he alleges noncompliance with certain statutory and administrative rule requirements. However, he does not specify what deficiencies he perceives in Order No. 18,812. His arguments imply, however, that there should be no due process difference between a normal rate case and a rate case in which there is an allegation of emergency. This argument has no merit. These proceedings are pursuant to RSA 378:9 which reads as follows:

Emergency. Whenever the commission shall be of the opinion that an emergency exists, it may authorize any public utility temporarily to alter, amend or suspend any existing rate, fare, charge, price, classification or rule or regulation relating thereto.

As stated supra, the Court in this case indicated that given the alleged emergency, the "findings can be made expeditiously after a hearing promptly convened ... ." Id. (emphasis added) In a previous emergency rate case involving Public Service Company of New Hampshire, Justice Blandin of the Supreme Court, in a split decision, indicated that "the test to determine whether the emergency statute may apply here is to inquire whether reasonable persons may find the affairs of this company are at such a crisis that immediate and substantial disaster threatens unless prompt relief is given. Re Public Service Co. of New Hampshire, 97 N.H. 549, 551 (Nov. 5, 1951) (2-2 decision; opinion of Blandin, J.) (emphasis added). The necessity for emergency relief depends on the immediate needs of the company. New England Teleph. & Teleg. Co. v. New Hampshire, 95 N.H. 58, 62, 75 PUR NS 370, 57 A.2d 267 (1948) (emphasis added).

The Consumer Advocate, by citing the case of Re Kelleher, 127 N.H. 274, indicates that because the commission is holding a hearing in this case due process is deficient. On the contrary, an emergency request pursuant to RSA 378:9 does not lose its character as an emergency, simply because the matter is set for public hearing. Re Public Service Co. of New Hampshire, 69 NH PUC 469, 472 (1984). Considering the claimed need for relief by the end of 1987 in order for the company to meet its cash requirements it is nonsensical to assert that prolonging the proceedings beyond that date would allow any opportunity for meaningful relief should an emergency ultimately be found to exist. The Consumer Advocate

---

would have the commission take a full 18 months to respond to an emergency situation. Tr. 1-19. We find this argument untenable. We have the statutory obligation to promptly determine whether an emergency exists and, if so, to provide appropriate relief. The Legislature intended by the emergency rate statute to vest in the commission as a fact finding body wide discretionary

powers to decide whether a crisis is of sufficient severity to warrant relief and if so the extent of the relief. Re Public Service Co. of New Hampshire, op. cit. 97 N.H. at 550.

The Consumer Advocate further alleges that Order 18,812 fails to provide proper notice as required by RSA 541-A:16 (III) and Puc Rule 203.01. On August 20, 1987, the commission issued an order of notice establishing docket DR 87-151. This notice was duly published by PSNH on August 21, 1987[1(103)] thereby providing public notice of the PSNH petition, the method and manner of intervention for interested parties, the date of the prehearing conference and other procedural matters. Subsequent to the duly noticed prehearing conference on August 27, 1987 all motions to intervene were granted by the commission and the procedural schedule was reaffirmed in Order No. 18,805 (72 NH PUC 373).

The Commission provided additional public notice on August 20, 1987, by notifying the media of the proceedings scheduled in the order of notice. The petition, proposed prehearing conference date of August 27 and the opportunity for intervention accordingly received wide circulation throughout the state.

The Supreme Court's remand order of September 2, 1987, and the commission's responsive procedural Order No. 18,812 scheduling a hearing for September 16 on the questions raised by the Court, were promptly made available to all parties on their date of issuance.

The September 16 hearing date dovetails with the previously established procedural schedule in the docket to allow full discovery by intervenors. The order appealed from by the Consumer Advocate, Order No. 18,812, curtailed PSNH's opportunity for discovery and expedited PSNH's response time but allowed the full time frame established in the order of notice for intervenor discovery to occur. The order of notice of August 20, 1987 provided the following schedule:

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

September 4, 1987 Intervenor data request to
     PSNH
 September 11, 1987 PSNH data responses
 September 18, 1987 Intervenor testimony
 September 25, 1987 PSNH data requests to
     intervenors
 October 2, 1987 Intervenor data responses
 October 5, 6, 7, Hearings
   8, 9, 1987
```

Order No. 18,812 added the September 16 hearing date to the schedule, without otherwise modifying said schedule, in response to the Court's request for limited findings of fact, thereby allowing PSNH data responses of September 11 to be available to the parties five days before the hearing — a reasonable period of time given the alleged circumstances.

Since the questions referred back to the

commission by the Court are clearly within the scope of this notice, we find that notice was adequate for the September 16 hearing.

For the reasons cited above, the Consumer Advocate's motion for rehearing is denied. His request that a new docket be opened is unnecessary because the relevant issues are within the

scope of the current docket. There is no need for an additional order of notice because the public has been more than adequately notified of the issues in this case and the various ratepayer groups are amply represented as full parties in the proceeding. All requested interventions were granted. The issues to be addressed at the hearing on September 16, 1987 are issues which would have been addressed at the previously scheduled hearings to be held between October 4 and October 9, 1987 but were moved up at the request of the Supreme Court for a prompt hearing. This hearing on September 16 is necessary to allow the Court as much time as possible to review our factual findings within the time frames required for appropriate relief should an emergency ultimately be found to exist. At the September 16 hearing we will address only those issues specified by the Court with all remaining issues to be considered at the previously scheduled October 5-9 hearings thereby allowing the parties as much time to prepare as possible within the constraints of this alleged emergency. If an emergency is ultimately found not to exist, or if the time constraints turn out to be less severe than alleged, then the time frames may be relaxed or the case may be dismissed, whichever may be appropriate. Unless and until such a finding is made, however, it would be irresponsible and contrary to the requirements of due process to extend the procedural schedule beyond that already established.

Our order will issue accordingly.

SUPPLEMENTAL ORDER

Based on the foregoing report, which is herein incorporated by reference; it is

ORDERED, that the motion for rehearing filed by the office of the Consumer Advocate on September 4, 1987 is hereby denied.

By order of the Public Utilities Commission of New Hampshire this fourteenth day of September, 1987.

FOOTNOTES

[1]The order of notice did not require publication until August 24, 1987 so publication was timely. The 17 day time frame required by N.H. Admin. Rules 203.01 was waived pursuant to Rule Puc 203.01. The allegation of emergency justified this waiver.

==========

NH.PUC*09/14/87*[60336]*72 NH PUC 393*Public Service Company of New Hampshire

[Go to End of 60336]

72 NH PUC 393

Re Public Service Company of New Hampshire

DR 87-151
Fourth Supplemental Order No. 18,828
New Hampshire Public Utilities Commission
September 14, 1987

ORDER denying motions to transfer certain questions of law and fact to the supreme court.

---

1. PROCEDURE, § 36 — Res judicata and laches — Timing of issues raised — Effect of changed circumstances.

[N.H.] Res judicata or laches apply only to issues that have already been decided, or that should have been raised and litigated at a previous time; when changed circumstances result in the issue being raised anew in a different context res judicata and laches do not apply. p. 394.

2. PROCEDURE, § 36 — Res judicata and laches — Changes circumstances — Construction work in progress.

[N.H.] It was deemed inappropriate to transfer to the state supreme court questions of law concerning whether the doctrines of laches and res judicata would prevent the commission from considering the constitutionality of including construction work in progress in the rate base of an

Page 393

electric utility notwithstanding the fact that the commission had previously rejected utility arguments concerning the inclusion of CWIP in rate base; the commission found that laches and res judicata did not apply because the arguments now offered by the utility included an allegation of an emergency, an allegation that had not been previously considered by the commission. p. 394.

3. APPEAL AND REVIEW, § 9 — Interlocutory review — Transferred questions of law — Findings of basic fact.

[N.H.] Although the state supreme court deferred accepting transferred questions of law concerning the constitutionality of including construction work in progress in the rate base of an electric utility until the commission addressed certain specific issues with findings of basic facts, it was found that the court clearly did not intend that said findings of basic facts should include a decision on whether the commission would allow the inclusion of CWIP in rate base; the commission concluded that such a finding would make the transfer virtually indistinguishable from the traditional appellate route that exists after the issuance of a final order. p. 394.

4. APPEAL AND REVIEW, § 9 — Interlocutory review — Matter before the commission — Questions of fact.

[N.H.] Although the commission has a statutory right to transfer to the state supreme court questions of law arising during the hearing of any matter before the commission, the commission has no authority to transfer questions of fact to the state supreme court. p. 395.

By the COMMISSION:

Report Regarding Consumer Advocate's Motion to Transfer

On September 8, 1987 the Consumer Advocate filed a motion to transfer certain questions to

the Supreme Court in order to clarify the Supreme Court's Order of September 2, 1987 in Supreme Court docket no. 87-311. That Supreme Court Order results from the prior Commission action in this docket of transferring two questions to the Supreme Court pursuant to N.H. Rev. Stat. Ann. § 365:20. On September 9, 1987 PSNH filed an "Objection to the Consumer Advocate's Motion to Transfer", thereby opposing the transfer requested by the Consumer Advocate. The Commission, via this Report and Order, denies the Consumer Advocate's Motion to transfer.

[1, 2] The first question that the Consumer Advocate has requested the NHPUC to transfer to the Supreme Court is as follows:

Is the Commission bound by the doctrine of Res Judicata and Latches (sic), to Dismiss the bifurcated portion of DR 87-151 scheduled for hearings on the constitutionality of CWIP, since the PUC Dismissed a case on the same issue put before it last year by PSNH in DR 83-368, 71 NH PUC — (1986), and has previously rejected PSNH's arguments on the same issues with respect to Seabrook in Docket DR 79-107, 64 NH PUC 295 (1979)?

The issue before the Commission at this time is the allegation of an emergency by PSNH and the requested rate relief that it alleges will alleviate that emergency. The alleged emergency and its causes were not considered or addressed by the Commission in the two dockets that the Consumer Advocate cites: docket numbers DR 83-368 and DR 79-107. The alleged circumstances causing the alleged emergency, particularly circumstances regarding the availability of external financing are, under the allegations, events that have occurred in the last few months. Thus, the assertion that the issues were already decided under a res judicata type argument or that they should have been raised and litigated at a previous time under the laches type argument are inappropriate. Thus, the Commission does not find it reasonable to transfer this question of res judicata or laches to the Supreme Court.

Page 394

The second question that the Consumer Advocate requests the Commission to transfer is as follows:

Can the parties develop a record as to whether bankruptcy would result in the cash required, or does the Court presume bankruptcy is not an option?

One area of basic facts the Supreme Court desires the Commission to make findings on relates to the need to take certain ratemaking action "to obtain the cash required by the end of 1987 to make interest payments as they become due, to pay off existing debt as it matures and to pay for the expansion of services to customers." The Commission believes this area defined by the Court focuses on cash obligations PSNH faces under its current arrangements or under any arrangements that its creditors may voluntarily agree to. The Commission does not believe this question contemplates considering the different cash obligations that PSNH might face as a result of a bankruptcy proceeding. Thus, with regard to the September 16, 1987 hearing and its focus on the basic facts requested by the Supreme Court, the Commission finds that the potential impact of a bankruptcy proceeding on the PSNH cash flow is not before the Commission in that particular hearing. The Commission does not believe that the Supreme Court order needs clarification in that regard and thus denies the Consumer Advocate's request to transfer this

question.

[3] The third question that the Consumer Advocate requested that the Commission transfer is the following:

In order to avoid a strictly advisory opinion is the Commission required to first decide whether it would in fact grant rates based on CWIP if a Court decision so allowed?

This third question in essence asks whether the Commission must issue an order that, except for the answer to the transferred question, would be dispositive of the case. The Court has not required such action by the Commission. In its September 2, 1987 order, the Court stated that the interlocutory transfer to the Court did not satisfy the basic requirement of providing a basic factual basis. The Court deferred accepting the transferred questions until the Commission addressed certain specified issues with findings of basic facts. Those specified issues are clearly less than what the proposed question asks about.

Going through the act of developing the entire record, making appropriate findings and issuing an order which would, minus the transfer, be dispositive of the case would make transferring the question virtually indistinguishable in substance from the traditional appellate route that exists after a Commission final Order on a motion for rehearing. The Court order, however, did not attempt to impose such requirements upon the transfer process. Instead, it seems to provide the potential for an alternate route to receive a decision on a legal issue involved in this pending proceeding. Thus, based on both the direction received from the Court in its September 2, 1987 order, and the above described understanding of the potential for the transfer process, the Commission declines to transfer the third recommended question by the Consumer Advocate.

[4] For the fourth question that the Consumer Advocate has listed, he requests that the Commission transfer a series of questions to the Supreme Court — but only if the Commission believes that the subject of those questions are not among the basic facts that are the subject of the September 16, 1987 hearing. The series of questions that the Consumer Advocate requests that we transfer under these circumstances is as follows:

A. Whether any of PSNH's Seabrook Partners have agreed to provide PSNH any of its cash needs and if so under what circumstances?

B. Whether PSNH can borrow from any

of its Partners and if so under what circumstances?

C. Whether any of PSNH's Partners are legally liable for any of PSNH's obligations and if so under what circumstances?

D. Whether strict cash conservation will suffice for 1987 as claimed in previously filed Affidavits?

E. At what cost is outside capital available today and why not avail itself of outside capital regardless the cost?

F. What is an unreasonable cost of money and how is that determined?

G. What is the maximum reasonable cost of money for a loan meeting cash needs to the end of 1987?

H. How much cash will the requested rates generate by the end of this year?

I. Can PSNH meet its cash needs by sale of any of its assets? including Seabrook? and if not why not?

J. Whether PSNH could raise the cash needed from the capital markets if it were certain Seabrook would be licensed eventually?

K. Whether its actually the anti-CWIP law that is restricting PSNH's acess (sic) to the capital markets or is it instead the possibility Seabrook will never operate?

N.H. Rev. Stat. Ann. § 365:20 provides for the Commission transferring "any question of law arising during the hearing of any matter before the commission." Neither this statute, nor any other statute, provide the Commission with authority to transfer questions of fact to the Supreme Court. As the Consumer Advocate himself seems to indicate, the questions that he has listed for his question number four involve factual questions. They do not involve questions of law. Thus, the Commission finds that it does not have the authority to transfer any of the above quoted questions A-K that the Consumer Advocate has included within the context of its fourth question. For this reason, the Commission declines to transfer the Consumer Advocate's fourth listed question.

Our Order will issue accordingly.

SUPPLEMENTAL ORDER

Based upon the foregoing Report Regarding the Consumer Advocate's Motion to Transfer, which is incorporated herein by reference, it is

ORDERED, that the Consumer Advocate's Motion to Transfer is denied.

By order of the Public Utilities Commission of New Hampshire this fourteenth day of September, 1987.

==========

NH.PUC*09/14/87*[60337]*72 NH PUC 396*Public Service Company of New Hampshire

[Go to End of 60337]

72 NH PUC 396

Re Public Service Company of New Hampshire

DR 86-41
Order No. 18,829

Re UNITIL Service Company

DR 86-69
Order No. 18,829

Re New Hampshire Electric Cooperative, Inc.

DR 86-70
Order No. 18,829

Re Granite State Electric Company

DR 86-71
Order No. 18,829

Re Connecticut Valley Electric Company

DR 86-72
Order No. 18,829

New Hampshire Public Utilities Commission

September 14, 1987

Page 396

INTERIM report and order determining the appropriate methodology for calculating the longterm avoided costs of New Hampshire electric utilities; the determination of long-term avoided cost rates and the terms and conditions under which qualifying small power production and cogeneration facilities would be entitled to receive long-term rates were deferred for consideration in another phase of the proceeding.

---

1. COGENERATION, § 30 — Rates — Calculation of utility avoided costs — Method of computation.

[N.H.] The commission adopted a non-unanimous settlement agreement determining the appropriate methodology for calculating the longterm avoided costs of New Hampshire utilities notwithstanding the claim that the settlement agreement should have been rejected as not sufficiently utility specific; (the determination of long-term avoided cost rates and the terms and conditions under which qualifying cogeneration and small power production facilities would be entitled to receive long-term rates were deferred for consideration in another phase of the proceeding.) p. 404.

2. COGENERATION, § 30 — Rates — Calculation of utility avoided costs — Methods of computation.

[N.H.] A non-unanimous settlement agreement adopted for use in determining the avoided costs of New Hampshire utilities incorporated two approaches for calculating avoided energy costs — (1) the production costing methodology, and (2) the proxy unit method. p. 405.

3. COGENERATION, § 30 — Rates — Calculation of utility avoided costs — Methods of computation.

[N.H.] A non-unanimous settlement agreement adopted for use in determining the avoided costs of New Hampshire utilities established a common methodology for estimating avoided generation capacity costs; essentially, the methodology values generation capacity as the market

value of generation capacity in excess of the minimum reserve requirement levels of the New England Power Pool. p. 411.

4. COGENERATION, § 30 — Rates — Calculation of utility avoided costs — Methods of computation.

[N.H.] Pursuant to a non-unanimous settlement agreement adopted for use in determining the avoided costs of New Hampshire utilities, a qualifying cogeneration or small power production facility may conduct site specific studies to determine what adjustment, if any, should be made to avoided costs to reflect avoided transmission capacity costs; in recognition of the fact that, for smaller QFs, the costs of such studies could have a significant effect on the economies of the project, a sliding scale for payment of avoided transmission capacity costs was established. p. 412.

5. COGENERATION, § 30 — Rates — Calculation of utility avoided costs — Method of computation.

[N.H.] A non-unanimous settlement agreement adopted for use in determining the avoided costs of New Hampshire utilities incorporated input assumptions to be used in estimating avoided costs; in evaluating the reasonableness of the input assumptions, which concerned fuel and capital price forecasts, load growth, capacity expansion plans, unit characteristics, and cost of capital, the commission concentrated its analysis on the time period in which the settlement agreement was reached, leaving a determination of a format for updating the assumptions for consideration in another phase of the proceeding. p. 413.

---

i. COGENERATION, § 25 — Rates — Calculation of utility avoided costs.

[N.H.] Discussion, by commission, of the procedural history leading to the issuance of an interim report and order determining the appropriate methodology for calculating the long-term avoided costs of electric utilities; (the determination of long-term avoided cost rates and the terms and conditions under which qualifying cogeneration and small power production facilities would be entitled to receive long-term rates were deferred for consideration in another phase of the proceeding.) p. 398.

ii. COGENERATION, § 25 — Rates — Calculation of utility avoided costs — Legal standards.

[N.H.] Discussion, by commission, of the legal

Page 397

standards established by the Public Utilities Regulatory Policies Act of 1978 and the Limited Electrical Energy Producers Act for the calculation and implementation of long-term avoided cost rates for power purchased by electric utilities from cogenerators and small power producers. p. 403.

APPEARANCES: Sulloway, Hollis & Soden by Eaton W. Tarbell, Jr., Esq. and Margaret Nelson, Esq. and Jeffrey S. Co- hen for Public Service Company; LeBoeuf, Leiby and MacRae

by Elias G. Farrah, Esq. and Paul K. Conolly Jr., Esq. for Concord Electric Co. and Exeter & Hampton Electric Company; Hall, Morse, Gallagher & Anderson by Jeffrey J. Zellers, Esq. for the New Hampshire Electric Cooperative; Philip H.R. Cahill, Esq. and William G. Hayes, Esq. for Granite State Electric Company; Joseph Kraus, Esq., for Connecticut Valley Electric Company; Skadden, Arps, Slate, Meagher and Flom by Glen J. Burger, Esq. and Mark Laufman, Esq. and Gary Chetkof, Esq. for KTI Energy, Inc., New England Coastal Generation Company, and A. Johnson Cogeneration, Inc.; Brown, Olson, and Wilson by Robert A. Olson, Esq. and William H. Wilson, Esq. and Michael A. Walker, Esq. for Pinetree Power Development Corporation, American Cogenics, Inc., Granite State Hydropower Association, Inc., Concord Regional Waste Energy Recovery Coop, Vicon Recovery Systems, Inc., Thermo Electron Systems, Inc., Wormser Engineering, Inc., Martin Energy, Inc., and EnescoThe Energy Systems Co., Inc.; Angus S. King, Jr., Esq. for Swift River/Hafslund Co.; Debeuoise and Plimton by Jeffrey S. Wood, Esq. for SES Concord, L.P.; Timothy Taylor for Baltic Mill Enterprises; Joseph W. Rogers, Esq. for the Consumer Advocate; Martin C. Rothfelder, Esq. for the Commission and for the Commission Staff.

By the COMMISSION:*(104)

INTERIM REPORT ON PHASES I & II

I. PROCEDURAL MATTERS

A. PROCEDURAL HISTORY

[i] On February 7, 1986 Public Service Company of New Hampshire (PSNH) petitioned for a comprehensive Avoided Cost Rate Proceeding. PSNH's petition requested, inter alia, that the Commission: 1) open a proceeding to review the terms, conditions and rates established in Re Small Energy Producers and Cogenerators, Docket No. DE 83-62, 69 NH PUC 352, 61 PUR4th 132 (1984); 2) establish consistent terms, conditions and avoided cost methodologies for sales by qualifying small power producers and qualifying cogenerators (hereinafter referred to as QFs) to all New Hampshire electric utilities; 3) update the rate determined in Re Small Energy Producers and Cogenerators, Docket No. DR 85-215, 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.

By Order of Notice dated February 26, 1986, this Commission opened Docket No. DR 86-41, Re PSNH Avoided Costs and set a procedural hearing on April 15, 1986 for the purpose of investigating the terms, conditions and avoided cost methodology established in Re Small Energy Producers and Cogenerators, DE 83-62, supra, including: 1) the length of the approved rates; 2) the appropriate amount of front-end loading; 3) the appropriate scenarios to use in a long term avoided cost forecast; 4) the appropriate assumptions and methodology to determine avoided capacity costs; 5) the adequacy of the DRI fuel forecast relied upon by PSNH for purposes of this proceeding; 6) PSNH's long term contract policy (if any); 7) PSNH's wheeling policy (if any); PSNH's cost of performing interconnection studies; and 9) the length of time necessary to perform interconnection studies.

In the Order of Notice 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 QFs to all New Hampshire electric utilities in the context of a single docket.

2) that the long term rates determined in Re Small Energy Producers and Cogenerators, DR 85-215, 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 (i.e., impose a moratorium on) long term rate filings submitted after February 7, 1986 pending resolution of the matters to be adjudicated in this proceeding.

PSNH filed a Motion for Rehearing on March 18, 1986 on, inter alia, the issue of the moratorium on long term rate filings. The Commission denied the Motion for Rehearing by Report and Order No. 18,202 (March 31, 1986), but stated that PSNH could renew its request for a moratorium in the context of a specific procedural schedule (71 NH PUC 224).

Petitions to Intervene in DR 86-41 were filed by the New Hampshire Electric Cooperative, Inc. (NHEC) on April 7, 1986; Swift River/Hafslund Company (Swift River) on April 28, 1986; American Cogenics, Inc. (American) on March 27, 1986; Pinetree Power Development Corporation (Pinetree) on March 25, 1986; A. Johnson Cogeneration, Inc. (A. Johnson) on March 28, 1986; KTI Energy, Inc. (KTI) and New England Coastal Generation (NewCogen) on March 28, 1986; Granite State Hydro Power Association, Inc. (Association) on March 31, 1986; Concord Electric Company and Hampton & Exeter Electric Company (hereinafter referred to as the UNITIL Companies) on April 11 1986; Connecticut Valley Electric Company (Conn Valley) on April 23, 1986; SES Concord, L.P. on April 24, 1986 (SES Concord); and Concord Regional Waste Energy Recovery Coop, (Concord Coop), Vicon Recovery Systems, Inc. (Vicon), 10Thermo-Electron Energy Systems, Inc. (Thermo), Wormser Engineering, Inc. and Martin Energy, Inc. (Wormser), and Enesco- The Energy Systems Co., Inc. (Enesco) on April 29, 1986.

Petitions for Limited Intervention were filed by Exeter River Hydro on March 24, 1986; the City of Nashua on April 15, 1986; Bethlehem Hydroelectric Co., Inc. on April 16, 1986; and Caroll F. Jones on December 24, 1986.

Hearing no objections to the Motions for Intervention and Limited Intervention in DR 86-41 the Commission granted the Motions.

The Commission opened, by Orders of Notice dated February 26, 1986, separate dockets to examine the terms, conditions and avoided costs methodology for the nonPSNH electric utilities as follows: Docket Nos. DR 86-69 the UNITIL Companies, DR 86-70 NHEC; DR 86-71 Granite State Electric Company (Granite State); and DR 86-72 Conn Valley.

Petitions to Intervene in DR 86-69, DR 86-70, DR 86-71, and DR 86-72 were filed by Glen Hydro, Inc. (Glen Hydro) on March 26, 1986 (DR 86-71 only); Ameri- can on March 27, 1986; Pinetree on March 27, 1986 (DR 86-69 only); Bio-Energy Corporation on March 27, 1986 (DR 86-71 only); A. Johnson on March 28, 1986; KTI and NewCogen on March 28, 1986; PSNH on

March 28, 1986; Association on March 31, 1986; Baltic Mill Enterprises on March 31, 1986 (DR 86-71 only); Concord Coop, Vicon, Thermo, Wormser on April 29, 1986; and Eastman Brook Hydro on August 5, 1986 (DR 86-72 only).

Granite State filed, on April 17, 1986, a Motion to Limit the Interventions of KTI, NewCogen, A. Johnson, and PSNH in Docket DR 86-71. On April 4, 1986 the UNITIL Companies filed a Motion titled OPPOSITION TO THE MOTION OF PSNH TO INTERVENE in DR 86-69. No objections were made with respect to any other petitions for intervention.

On May 13, 1986 the Commission issued Report and Order No. 18,253 in DR 86-71 that granted, inter alia, Granite States's motion to limit the intervention of KTI, NewCogen, and A. Johnson, but denied the

Page 399

request to limit the intervention of PSNH (71 NH PUC 276). The Commission issued Report and Order No. 18,274 in DR 86-69 (May 13, 1986) denying the UNITIL Companies' motion opposing the intervention of PSNH and thereby granted PSNH full intervention in DR 86-69 (71 NH PUC 317). Hearing no further objections, the Commission granted all other motions for intervention in DR 86-69, DR 86-70, DR 86-71, and DR 86-72. Subsequently, by letter dated March 16, 1986, A. Johnson withdrew its intervention in these dockets. On January 13, 1987 Glen Hydro also volun- tarily withdrew from these dockets without prejudice.

At the April 15, 1986 procedural hearing in DR 86-41, PSNH filed a Motion for Interim Rates Based on a Limited Temporary Suspension of Approval of Long Term Rate Filings made pursuant to Order No. 17,104 in Docket DE 83-62 (69 NH PUC 352, 61 PUR4th 132) as updated in Order 17,838 in Docket DR 85-215 (Interim Rate Motion) (70 NH PUC 753, 69 PUR4th 365). The Commission granted the intervening parties until April 29, 1986 to file memoranda in response to the Interim Rate Motion.

Responses to the PSNH Interim Rate Motion were filed by Conn Valley on April 23, 1986; Swift River on April 24, 1986; jointly by Pinetree, Concord Coop, Vicon, Thermo, Wormser, Association, and Enesco on April 29, 1986; jointly by A. Johnson, KTI, and NewCogen on April 29, 1986; and SES Company, L.P. on April 30, 1986.

On May 12, 1986, PSNH filed a reply memoranda to the responses filed by intervening parties to the Interim Rate Motion.

On May 19, 1986, the Commission issued Report and Order No. 18,260 denying PSNH's Interim Rate Motion (71 NH PUC 288). In its Order No. 18,260 the Commission stated that "PSNH's request for interim rate[s] is fundamentally a ... moratorium on alternate energy development ... . The request for interim rates does not assert any evidence or argument that was not previously fully considered by the Commission." Order No. 18,260, page 8 and 9 (71 NH PUC at 292).

On August 27, 1986, following the filing of direct testimony pursuant to the established procedural schedule, the Commission issued Report and Order No. 18,385 amending the remaining procedural schedules in DR 86-41, DR 86-69, DR 86-70, DR 86-7I, and DR 86-72 and directing the parties to attend a multi-docket prehearing conference on September 2, 1986

for the purpose of limiting issues and discussing procedural matters.

On September 5, 1986 the New Hampshire Public Utilities Commission Staff (Staff) filed a motion for additional dates in a multi-docket prehearing conference and for a continuance of the due dates in DR 86-71. Due to the lack of unanimity behind Staff's motion, and the short notice period that would result if approved, the Commission declined, in Report and Order No. 18,397 (September 10, 1986), to set additional dates in a multi-docket prehearing conference. However, the Commission did encourage parties "to continue to meet on a voluntary basis and place into writing a document which dealt with definition, limitation, and settlement of issues." Report and Order No. 18,397, page 2.

On September 11, 1986 the Commission issued Report and Order No. 18,398 in DR 86-41 (71 NH PUC 540) ordering that pending completion of this investigation, no long term rate filings filed after the date of said Order, based on the avoided cost rate set forth in Docket No. DR 86-134, Re Small Energy, Producers and Cogenerators, Report and Order No. 18,334, 71 NH PUC 408 (1986), would be accepted or approved by the Commission. The Commission stated in its Order No. 18,398, that "additional filings under DR 86-134 may exacerbate the problem" with the methodology used in DR 86-134 and "interfere with the investigation into the methodology that will address it." (71 NH PUC at 541.)

On September 23, 1986 the Commission issued Report and Order No. 18,407 consolidating for purposes of hearing DR 86-41, DR 86-69, DR 86-70, DR 86-71, and

DR 86-72, continuing all due dates set in them, setting additional prehearing conference dates, and setting additional procedural dates for the now consolidated dockets (71 NH PUC 547). The Commission's stated purpose for rescheduling and consolidating these dockets was, in part, as follows:

> The Commission considers it of utmost importance that the policies set by these avoided cost proceedings be consistent in their statewide, multi-utility, and multiqualified 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.

(71 NH PUC at 547, 548.)

Granite State filed a motion on October 3, 1986 to consider particular issues individually in DR 86-71. Pinetree, Glen Hydro, American, and the Association (Pinetree et. al.) filed a motion on October 3, 1986 requesting consideration of certain issues individually in DR 86-41, DR 86-69, DR 86-70, DR 86-71, and DR 86-72. On October 15, 1986 PSNH filed a response in opposition to Granite State's motion and separately to Pinetree et. al.'s motion. On October 17, 1986 the UNITIL Companies filed a response in support of the motion filed by Pinetree et. al.

The Commission issued Report and Order No. 18,520 on December 23, 1986 denying Granite State's and Pinetree et. al.'s motions requesting consideration of certain issues in individual dockets based, in part, on the following (71 NH PUC 821, 824):

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 No. 18,407 for purposes of hearing, with the following language:

The Commission, however, anticipates that it may need to make utility specific findings in this consolidated docket from utility specific evidence ... [T]he goal of consistency does not conflict with the recognition that we may need to make utility specific findings based on utility specific evidence. Id., at 6. (citation omitted).

Pursuant to the procedural schedule approved by the Commission in Order No. 18,407 a hearing was held on October 3, 1986 for the purpose of reporting on the progress of the prehearing conferences. At the hearing Staff's General Counsel presented a progress report and requested that the Commission allow the parties to continue to meet. All the parties were in agreement with the progress report and supported the request for additional prehearing conferences. Pursuant to the proposed prehearing procedural schedule, parties were directed to file a settlement agreement on the technical issues involved in the calculation of avoided costs by November 3, 1986 or, if settlement was not reached, to prepare to defend their respective prefiled cases. Prior to the close of the hearing, the Commission approved the procedural schedule requested. Subsequently, the Commission issued Order No. 18,474, on November 5, 1986, granting additional time to file the settlement agreement and direct testimony.

By letter dated November 12, 1986 the Commission's General Counsel advised the Commission that settlement discussions had not yet resulted in any kind of settlement. On November 23, 1986 the parties to the prehearing conferences met at the Commission's offices and, unable to achieve a

unanimous settlement agreement, on December 5, 1986 filed a non-unanimous settlement agreement with the Commission, on the methodology and input assumptions for calculating long term avoided costs. The parties to the settlement agreement include: 1) all electric utilities subject to RSA 362-A, except PSNH; 2) all intervenor QFs; 3) the Consumer Advocate and 4) the Commission Staff. While PSNH participated in all the sixteen days of settlement conferences it did not join in the settlement agreement.

On December 3, 1986 the Consumer Advocate filed a Motion to Extend Time for Filing Testimony. Granite State filed a letter dated December 4, 1986 responding to the Consumer Advocate's motion and stating Granite State did not object to the requested extension. On December 17, 1986 PSNH filed an Objection to the Consumer Advocate's Motion to Extend Time for Filing Testimony. The Consumer Advocate filed, on December 30, 1986, a reply to PSNH's ob- jection to their motion and on January 5, 1987 the Consumer Advocate filed the direct testimony of its consultants.

On January 26, by Report and Order No. 18,552, the Commission ordered, inter alia, that the testimony filed by the Consumer Advocate would be accepted as timely filed (72 NH PUC 37).

On January 12, 1987 Pinetree and American filed a motion requesting the Commission to designate its General Counsel and Staff as advocates in these proceedings. On January 15, 1986 The Consumer Advocate also filed a Motion to Designate Staff Advocates. The Commission unanimously denied these two motions at the scheduled January 19, 1987 procedural hearing.

At the January 19, 1987 procedural hearing the parties presented the Commission with a unanimous proposal for a three phase hearing schedule based on a January 15, 1987 Granite State Motion for a Phased Proceeding. Under this proposal, the first phase would involve the parties to the settlement agreement presenting the settlement agreement and evidence in support of it. The non-PSNH utilities (the UNITIL Companies, NHEC, Granite State and Conn Valley) would, for purposes of Phase I, not present their original prefiled direct case on developing avoided costs for their com panies. In Phase I PSNH would present all material relevant to developing avoided costs for it and that it deemed relevant to the settlement agreement. At the end of PHASE I the Commission would, after briefs, issue an order that either accepts or rejects the settlement agreement for developing avoided costs for the non-PSNH utilities, and that develops avoided costs for PSNH by use of the settlement agreement or by other methodologies in the record. Phase II of this proceeding would occur only if the Commission rejected the settlement agreement for the non-PSNH utilities. Since in Phase I PSNH would present evidence on its avoided costs and on the settlement, the Commission would not hear any new evidence in Phase II on PSNH's avoided costs. If Phase II did occur, additional cross examination of PSNH witnesses relevant to the non-PSNH utility avoided cost would be allowed. Phase III of the proceeding would deal with policy matters in this proceeding. Those issues are generally those that are not addressed by the settlement agreement. The Commission found this unanimous proposal reasonable and adopted this three phase approach to this docket.

The Commission held 13 days of hearings on these dockets between January 11, 1987 and February 13, 1987. During the hearings 73 exhibits were marked. In Order No. 18,619 the Commission marked late filed exhibits 74-79, and admitted exhibits 1-7, 10-14, 17-19, 21-26, 28-50, 52-70, 72-73, and 77-79 into evidence as detailed therein. PSNH requested that exhibits 74-76 be admitted into evidence for purposes of Phase I.

B. PROCEDURAL DECISION

The request that exhibits 74-76 be admitted into evidence is reasonable and those exhibits shall be admitted into evidence for all phases of this docket.

II. POSITION OF THE PARTIES;

All New Hampshire electric utilities, with the exception of PSNH, and all QFs who have intervened in this proceeding, as well as the Commission Staff and the Office of the Consumer Advocate have filed a settlement agreement on the appropriate methodology and assumptions involved in the calculation of avoided costs for the UNITIL Companies, NHEC, Granite State, and Conn Valley. With respect to the calculation of avoided costs for PSNH, the parties to the Agreement have all agreed that "one reasonable method to determine PSNH's avoided costs is to determine them consistent with this Settlement Agreement." Exhibit #1, page 8.

PSNH recommends that the Commission reject the Settlement Agreement methodology for calculating avoided cost for all New Hampshire utilities in favor of an "independent" methodology proposed by PSNH. PSNH argues that its "independent" methodology provides the framework for calculating the avoided cost of all utilities and that the Commission should accept its calculation of avoided cost as filed in its December 3, 1986 supplemental testimony and proceed with Phase II of these proceedings wherein the avoided cost of the other four utilities would be determined. Further discussion of the position of the parties appears in the Commission Analysis section, infra.

III. Legal Standards

A. Federal Law

[ii] Section 210 (a) of the Public Utility Regulatory Policies Act of 1978 (PURPA), 16 U.S.C §824(a), requires the Federal Energy Regulatory Commission (FERC) to prescribe rules requiring electric utilities to purchase energy and capacity from qualifying cogenerators and qualifying small power production facilities. Section 210(b) of PURPA provides that

the rules ... shall assure that 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.

PURPA further provides that the rules prescribed under PURPA shall not provide for rates that exceed the "incremental cost of alternative energy." Id. PURPA defines the term "incremental cost of alternative energy" as "the cost to the electric utility of the electric energy which, but for the purchase from such cogenerator or small power producer, such utility would generate itself or purchase from another source." PURPA §210(d); 16 USC§824a-3(d). PURPA also requires state regulatory authorities to implement the FERC rules for each utility over which it has rate making authority. PURPA §210(b), 16 USC §824(f).

The rules promulgated by the FERC under Section 210 of PURPA, 18 C.F.R. §292.101 et seq. (1982), generally require utilities to purchase electricity from QFs upon which construction commenced after November 9, 1978 at avoided costs. The regulations define "avoided costs" in the same manner that the statute defines "incremental cost of alternative energy." 18 C.F.R. §292.303(e). However, the rules provide various parameters and factors to be considered, "to the extent practicable" in determining avoided costs. 18 C.F.R. §292.303(e). In addition, the FERC in the preamble to its regulations has clearly indicated that they have provided the states considerable discretion in methodology and implementation. FERC Order No. 69, 45 Fed. Reg. 12214, 12226 (February 25, 1980); FERC Statutes and Regulations, Regulation Preambles 1977-1981, ^30, 128, at 30,883.

B. New Hampshire State Law

In 1978, prior to the enactment of PURPA, the New Hampshire legislature enacted the

Limited Electrical Energy Producers Act (LEEPA), 1978 N.H. Laws 32:1 (codified at RSA 362-A:1 to A:7 (1984 & Supp. 1986) "to provide for small scale and diversified sources of supplemental electric power to lessen the states dependence upon other sources which may, from time to time, be uncertain." RSA 362-A:1. Like PURPA, the state statute requires public utilities to purchase electric power from QFs at rates set from time to time by the Commission. RSA 362-A:4. The Commission's authority to set long-term as well as short-term rates was addressed by the 1983 Legislature, which amended RSA 362-A:4 to provide:

Public Utilities purchasing electric energy in accordance with the provisions of this chapter shall pay rates per kilowatt-hour to be set from time to time by the commission. Said rates, shall be based on the purchasing utility's avoided costs. The commission may set long-term rates which shall, at the option of the qualifying small power producer or qualifying cogenerator, be based on the purchasing utility's avoided costs either calculated for the time of delivery or calculated for a specified term at the time the qualifying small power producer or qualifying cogenerator agrees to be obligated to deliver for the specified term. Nothing in this section shall limit the authority of any electric utility or any qualifying small power producer to agree to a rate for any purchase which differs from the rate or terms or conditions which would otherwise be required by the commission.

C. Ratemaking Process

The PURPA and LEEPA statutes require this Commission to engage in a ratemaking process which unquestionably borrows from traditional utility ratemaking. When this Commission sets rates or develops avoided costs through a ratemaking process, there must be an evidentiary basis showing that such rates are appropriate for a utility's particular factual circumstances. Re Granite State Electric Co., 121 N.H. 781, 435 A.2d 119 (1981). Ratemaking can not be reduced to an exact science, and involves use of judgement. New England Teleph. & Teleg. Co. v. New Hampshire, 113 N.H. 92, 95, 98 PUR3d 253, 302 A.2d 8114 (1973). Ratemaking also involves the use of discretion and judgement in cutting off the update of data. Id., at 99.

This Commission must apply these same standards to consider the non-unanimous settlement agreement and the other proposals before it in these dockets. A determination of whether the end result is just and reasonable necessarily involves consideration of the methodology, data and judgement that went into a proposal. The Commission has applied these general standards in the analysis below.

IV. COMMISSION ANALYSIS

A. Introduction and Summary

[1] The purpose of Phase I in these proceedings is to determine reasonable estimates of avoided costs over the long term for all New Hampshire utilities. Phase I does not involve the consideration of long term avoided cost rates nor the terms and conditions under which a QF would be entitled to receive long term rates. Those issues are to be addressed in Phase III of these proceedings, therefore, our findings contained herein do not set the rates that the utilities will be required to pay for power made available to them by QFs. The parties to this proceeding have recommended particular time tables for consideration of methodology and procedures for calculating short term avoided costs. These timetables are impossible to meet. There is also a lack of evidence indicating a need for expeditious treatment of short term avoided costs. Thus,

the Commission will not consider short term avoided costs at this time.

The central issues to be considered during Phase I are as follows:

(1) What is the appropriate methodology for calculating long term avoided costs and,

(2) what are the proper input assumptions for each utility to be used in calculating long term avoided costs.

Based on the foregoing legal standards and the record in this case, the Commission finds that the non-unanimous settlement agreement provides the most reasonable and appropriate resolution of the central issues in Phase I of this proceeding. That resolution of Phase I for the UNITIL Companies, NHEC, Granite State and Conn Valley is supported by all New Hampshire electric utilities (with the exception of PSNH), all intervening QFs, the Consumer Advocate, and the Commission's Staff. These same parties also all agree that "one reasonable method to determine PSNH's avoided costs is to determine them consistent with this Settlement Agreement." Exhibit #1, page 8. This Commission finds that the different and sometimes conflicting interests of the parties supporting this resolution, the diverse backgrounds of those testifying in support of the settlement agreement, and the candid, articulate testimony of the panel of expert witnesses supporting the settlement agreement provides a balanced, well rounded, and highly credible evidentiary basis for the resolution of the issues raised in Phase I of this proceeding.

The parties to the settlement agreement have made choices as to which methodologies and input assumptions should most closely reflect the individual utility's planning procedures. Consistency within an individual utility is desirable in order to reflect its long range strategic plans so that the utility's traditional investment decisions are properly evaluated by system planners against QF purchases. The settlement agreement provides this type of consistency by utilizing several utility specific factors such as utility specific generating units, purchases, sales, load forecasts and cost of capital.

Moreover, consistency among utilities may be desirable when certain factors such as price inflation rates, capital construction costs and tax laws, beyond the control of the individual utility, are found to impact all utilities similarly. The settlement agreement reflects this type of consistency even though each utility may use different methodologies and input assumptions for their own internal planning. In summary, we find that the settlement agreement reflects consistency within each utility where consistency is appropriate and reflects consistency among utilities where it is most appropriate.

While the Commission addresses particular issues raised during the proceedings below, the Commission generally finds that it cannot accept the PSNH recommendation to reject the settlement agreement for the calculation of avoided cost for all New Hampshire utilities, despite PSNH's contention that the settlement agreement is flawed in several key areas. PSNH presented its position via its December supplemental testimony (Exhibit #37) after most of the discovery and all the prehearing conferences that resulted in the non-unanimous settlement agreement were held in this proceeding. The PSNH presentation indicates that they have significantly revised their original testimony (Exhibit #36, May, 1986). The PSNH revision adopts several key

elements contained in the settlement agreement and argues that the settlement agreement is generally not sufficiently utility specific. These actions, and the content of the PSNH presentation, do not persuade the Commission that the settlement agreement should be rejected as not sufficiently utility specific.

B. Methodology

1.) Avoided Energy Costs

a.) Production Costing Methods

[2] The settlement agreement incorporates

Page 405

two approaches for calculating avoided energy costs prior to the year 2001 — the production costing methodology used by Granite State and Conn Valley, and the proxy contract used by the UNITIL Companies. Under the settlement agreement the NHEC reserved the right to argue that as a matter of policy, its avoided costs should be based on the wholesale rate of PSNH, its principal supplier. However, if this position is rejected, the parties to the settlement agreement, with the exception of American which objects to the recommendation, and Glen Hydro, Pinetree, ENESCO, and the Association, which, at the time of the settlement agreement, did not take a position on the issue, recommend that the Commission set the NHEC's avoided costs at the avoided costs established in this proceeding for PSNH.

For Granite State and Conn Valley the estimation of long-term avoided energy costs are based on the production costing model of their full requirements suppliers, New England Power Corporation (NEP) and Central Vermont Public Service Corporation (CVEC), respectively. The production costing models used are the same as those used by NEP and CVEC for other corporate planning purposes. These models simulate the operation of NEP's and CVEC's units on an own load or "island" dispatch basis. As such, these models measure what are termed "island lambdas". Island lambdas are the incremental energy costs of meeting the utility's "own load" with the utility's own sources.[1(105)] This dispatch is hypothetical because the utilities in New Hampshire (and throughout New England) are participants in the New England Power Pool (NEPOOL) and can be expected to participate in power pool energy exchange and have their units committed on a pool-wide basis. Therefore, in order to reflect the utilities interaction with the NEPOOL, the parties to the settlement agreement make adjustments to the production costing model island lambdas as discussed herein.

UNITIL Power Corp. (UNITIL Power) provides the UNITIL Companies with full requirements. UNITIL Power began providing such power in October 1986. At the time of the hearings UNITIL Power had not yet developed a production costing model. Under the settlement agreement the projection of avoided energy cost prior to 2001 for the UNITIL Companies are based on a UNITIL Power proxy contracts: power supply contracts that UNITIL Power recently negotiated in the power supply market. However, it was agreed by the parties to the settlement agreement that the UNITIL Companies would also use a production costing model for the next update of avoided costs.

PSNH does not dispute that each utility already employing a production costing model

should continue to do so. Exhibit #3, Appendix 2, page 3. PSNH, however, does dispute UNITIL's use of the proxy contract method and recommends that the UNITIL Companies use a production costing model. PSNH offered the use of its production costing model for this purpose.

For purposes of calculating its avoided costs prior to 2002, PSNH uses its own production costing model (PROSIM). Like the production costing models used in the calculation of Granite State's and Conn Valley's avoided costs, PROSIM simulates the operation of PSNH's units on an own load or island dispatch basis. PSNH argues that the island dispatch lambdas measured by PROSIM are its avoided energy costs and that adjustments that reflect a utilities participation in NEPOOL are inappropriate from both a legal and technical perspective.

PSNH and the parties to the settlement agreement agree that it is appropriate to use the decrement method in the production cost modeling to develop avoided costs. Exhibit #1, page 10; Exhibit #37, Appendix 2, page 4. There is general agreement concerning the manner in which the decrement method should be employed. The decrement method requires two production cost simulations. The first run is a simulation of production costs without incremental QF as a "base case". The second run involves a reduction of load in the amount of the decrement.[2(106)] Exhibit #1, page 10; Exhibit #37, Appendix 2, page 4.

Based on the record before us, we find that the production costing models utilized by each utility are representative of costing models employed in the industry, and thus, are reasonable for the purpose at hand. We also find the decrement method reasonable to develop avoided costs. In general, the decrement method is analogous to the definition of avoided costs in that it calculates the difference in cost with and without a specific block of power.

As noted above, the UNITIL Companies did not calculate avoided cost through production modeling, but instead relied upon a proxy contract method. UNITIL will, however, use a production costing model at the time of the next update. Exhibit #1, page 10. In developing the UNITIL Companies' avoided costs, the parties to the settlement agreement utilized the combined judgment of both buyers and sellers in the power market. The parties to the settlement agreement compared the resulting avoided costs for the UNITIL Companies in relation to the other New Hampshire utilities' avoided cost. They concluded that the resulting costs were in line with the costs which would have resulted if UNITIL used a production costing model. Tr.III-135. While PSNH attempted to model UNITIL avoided cost using its production costing model, the record clearly demonstrates that PSNH had neither the information nor sufficient time to adequately model UNITIL's avoided cost. In addition, the results obtained by PSNH were shown to be inconsistent with the avoided costs of the other New Hampshire utilities and the collective judgment of all other parties. Given the recent changes in the UNITIL Companies operations, and recent experience negotiating for power in the power supply market combined with the expert judgement of the parties to the settlement agreement, the proxy contract approach is reasonable for purposes of calculating the avoided costs of the UNITIL Companies at this time.

The PSNH wholesale rate or PSNH's avoided costs provide the only potentially reasonable calculations of NHEC's avoided costs. This finding is based on the fact that PSNH is NHEC's

principal supplier. The Commission shall, pursuant to the settlement agreement, consider additional evidence on this issue in Phase III prior to a final decision on avoided costs for NHEC.

b.) Proxy Unit Method

The parties to the settlement agreement and PSNH have recommended that, at some time during the estimate of long run avoided energy costs, each utility should change its estimation of avoided energy costs based from being based upon utility specific production costing numbers to being based upon the running and capitalized energy savings of a new base load Integrated Gasified Combined Cycle (IGCC) proxy or reference unit. The calculation of the value of the IGCC proxy unit as stated in the settlement agreement is reproduced below.

Beginning in the year 2002, for the purposes of the settlement agreement, all utilities agreed to incorporate the capital and energy costs of an IGCC proxy unit into their avoided cost calculations, with the recognition of these costs beginning the year 2001, as described in the following paragraph.

The IGCC proxy unit would be coal fired in its final stage but would allow for flexible planning conditional on fuel economics. The capital construction costs and AFUDC were estimated. The cumulative present value of revenue requirements associated with an IGCC proxy unit was allocated over its book life. The cost pattern was projected as an economic carrying charge with a 5% escalation rate. These costs were phased into the years 2001 and 2002 by averaging projected avoided energy values from the production modeling with the capitalized fuel savings plus fuel costs of the IGCC proxy unit. In 2003 and thereafter, the full value of the economic carrying charge is reflected. See Attachment 5 of Appendix

Page 407

1. The parties have agreed to use a common revenue requirement calculation and stream of economic carrying charges for the IGCC proxy unit cost representation since, for the purposes of the settlement agreement, differences in the utility revenue requirements for this unit were not warranted over that term.

The avoided energy costs beginning in 2003, and through 2021, which are the same for all parties, are the fuel costs of the IGCC proxy unit and its energy related capital costs. The energy related capital cost of the IGCC was calculated by subtracting the economic carrying charge of the combustion turbine from the economic carrying charge of the IGCC proxy unit and expressing this difference in terms of cents per kwh. For the purpose of expressing those energy related capacity costs in cents per kwh, an annual capacity factor of 70% was assumed. See Attachment 6 of Appendix 1.

Attachment 5 of Appendix 2 shows the calculations of the capital cost of the IGCC. In making the calculation of the IGCC costs, each utility used the capital costs developed by NEP/Granite State, including NEP's estimated cost of capital. This step was taken to achieve consistency in recognition of the fact that at some point in time the avoided costs of the various utilities are expected to be very similar. Exhibit #1, pages 19-20.

We find this uncontested methodology of using the IGCC proxy unit costs to estimate long

run avoided costs reasonable. Our analysis of the proxy unit methodology indicates that this method properly recognizes the avoidability of base load capital cost in the long run estimates of avoided costs. Moreover, the cost representation of the proxy unit (i.e. capitalized fuel savings), as recommended by all parties, unifies the stream of avoided costs with the capital expansion plans of the utilities, thereby providing for consistency in the treatment of QF purchases and traditional utility investment options.

c.) Timing of Transition to Proxy Unit

While all parties agree upon making a transition to the IGCC proxy unit method discussed above, there is dispute over the timing of the transition to this method. From 2003 and beyond the avoided costs of all utilities are identical, however, the settlement agreement reflects the introduction ofthe IGCC proxy unit for all utilities beginning in the year 2001, while PSNH begins to incorporate the IGCC proxy unit into its avoided costs in 2003.

A base load unit, such as the IGCC proxy unit, should not be built by the utilities and, therefore, incorporated into the avoided cost estimate until it is economically justified. The point of economic justification is generally defined as that point in time in which the fuel savings of a new base load generation will justify, in a cost sense, the higher capital investment of a base load unit. The parties to the settlement agreement chose a common year to incorporate the IGCC proxy units costs based upon the combined judgement of utility experts, representing Granite State, Conn Valley, and the UNITIL Companies, QF expert witnesses Dr. Ringo and Dr. Shaker, and the Commission staff witness Mr. Collin. Their analysis is based upon the recognition that each utility is a member of the tightly interconnected NEPOOL system and in the long run the avoided costs of the individual utilities is likely to be similar. PSNH objects to the incorporation of the IGCC's cost in a common year and the phase-in of these costs. While PSNH agrees that in the long run the avoided costs of the utilities is likely to be similar, it bases its analysis on a view of the utilities operating in isolation of the power pool.

The choice between these two positions is a determination of which analysis best reflects the factual circumstances that the utilities face. On balance, we believe that the settlement agreement best reflects those

factual circumstances. Because each utility is a member of the NEPOOL, it is appropriate to consider each utility's particular situation taking into account its participation in the power pool. The settlement agreement's recommendation to use a common year for the transition to the IGCC proxy units costs is consistent with this approach and is more appropriate than the PSNH recommendation which views each utility in isolation. Further, the end result should provide for a reasonably smooth transition from the production costing to the IGCC proxy unit numbers. We state this because it is intuitively unreasonable for there to be a wide fluctuation in avoided costs at the time of transition absent same evidence supporting such fluctuation. The phase in of the IGCC proxy unit in the year 2001 and 2002 results in less fluctuation in the avoided costs estimates and is reasonable for the purpose at hand.

d.) Avoidability Issues

i.) Indirect Factors

The settlement agreement adjusts the avoided energy costs upward by 1% to reflect avoidable costs associated with the fuel inventory, working capital, and variable operating and maintenance costs.[3](107) The parties to the settlement agreement agreed that an adjustment for these factors, while difficult to quantify precisely, was appropriate and could range from 0 to 2%. Exhibit #1, page 15. The parties also agreed to only make the adjustment through 2001 as these costs were already included in the IGCC proxy unit. Id.

PSNH testified that it believed these costs were zero for its system. Exhibit #37, Appendix 2, page 7.

An adjustment for the indirect factors discussed above was previously approved by this Commission in Docket DE 83-62. We found that savings in working capital and inventory carrying costs should result from reduced utility fuel consumption due to the addition of QFs on a utility system, and held that adjusting inventories for declining oil consumption would reflect good business practice. In Re Small Energy Pro ducers and Cogenerators, DE 83-62, 4th Supplemental Order No. 16,616, 68 NH PUC 531, 542, 543 (1983). The Commission also found that:

[P]urchases from small power producers will reduce the normal lag in customer receipts over expenses, thereby reducing working capital needs. Id., 68 NH PUC at 542.

The settlement agreement reflects a recognition that the modeling techniques used by the utilities can not accurately project all the factors which influence energy costs. On balance, however, we find that the settlement agreement provides a reasonable adjustment to account for the impact of these indirect factors that are inherently incapable of exact quantification.

ii.) Line Losses

The parties to the settlement agreement and PSNH take the same position concerning line losses. Exhibit #1, page 16; Exhibit #37, Appendix 2, page 7. We find this provision reasonable.

The parties agreed that QFs under 500kw will be presumed to receive an adjustment reflecting marginal line losses from the subtransmission system down to the point of interconnection with the QF (34 KV or 46KV for Conn Valley), but would be presumed to receive no adjustment for any additional transmission line losses. Either the QF or the utility may request a site specific study, with the party requesting the study bearing the actual costs of such study. The results of the study will control any adjustment to the QF's rates, whether negative, positive or neutral. With respect to QFs over 500 kw, each QF will undergo a site specific study to determine marginal line losses. The QF will be required to bear the costs of the site specific studies. The

utilities and the QF are free to negotiate different arrangements on a case by case basis.

iii.) Off-System Exchanges

One of the main disputes in these proceedings has been the issue of off-system purchases and sales (hereinafter referred to as interchange transactions) and their treatment in the avoided energy cost calculation.

As discussed above, the production costing models used by each utility derive avoided energy cost based on a own load or island dispatch. The utilities in the settlement agreement make adjustments to their island dispatch lambda to account for interchange transactions in the calculation of avoided energy cost. The reason and method for accounting for interchange transactions in the calculation of avoided costs is stated in the settlement agreement as follows:

The parties agree that off-system exchanges can make measurable differences in the avoided energy costs. Sales to a higher cost system can increase the value of incremental power for the selling utility, and purchases from a lower cost system can reduce the value of incremental power for the buying utility. The parties agreed to represent this situation by a split of the difference between a proxy for the pool lambda value (avoided costs) and the own load calculation of avoided cost of the utility under the following formula:

Off-System Exchange Adjustment = 1/2 (Pool Lambda Proxy - Own Load Lambda) x Applicability Factor

The pool lambda proxy was represented by an oil fired generation unit burning 2.2% sulfur oil with a 10,600 BTU/KWH heat rate. The pool lambda was adjusted by a 93% factor for sales and a 107% factor for purchases. These factors reflect the parties' understanding of the on-peak and off-peak cost ratios for the pool lambdas and an assumption that this differential would serve as the buying price and selling price ratio.

The parties agreed that the 1% adder for inventory and working capital would be reflected by modifying the off-system exchange adjustment in the following manner:

1/2 x (Pool Lambda Proxy - 1.01 Own Load Lambda) x Applicability Factor

For Connecticut Valley and Granite State, the applicability factor was 1. For PSNH the same factor should apply. Since UNITIL's proxy method reflects market conditions, it did not make an explicit adjustment for off-system exchanges.

In prior PSNH avoided cost rate setting dockets this Commission has recognized the inclusion of interchange transactions in the calculation of avoided costs. See NH PUC Order No. 16,619 (68 NH PUC 531) (Sept. 2, 1983) and NH PUC Order No. 16,664 (68 NH PUC 575) (Oct. 4, 1983). While PSNH reflected the value of interchange transactions in its original testimony (May 1986) with respect to QFs of 5 MWs or less, PSNH later revised its testimony in December and eliminated the adjustment, stating that it was "inappropriate to include the off-system adjustment in either energy or capacity components of avoided costs." Exhibit #37, Appendix 2, page 12.

Based on our review of the presentation of the parties to the settlement agreement and PSNH's criticisms of the interchange transaction adjustment, we find that the measure of avoided energy costs, including a interchange transaction adjustment, most closely approximates each individual utility's avoided energy costs. From a technical standpoint, the parties to the settlement agreement have proposed a reasonable computational procedure to estimate the effect of interchange sales on avoided costs. The interchange transaction adjustment

recognizes that each utility in New Hampshire is a participant in the NEPOOL and can be expected to participate in economy energy exchange and have its units committed on a pool-wide basis.

Perhaps the clearest statement concerning the inappropriateness of the PSNH method to calculate its avoided cost solely by means of its own load dispatch lambda, (omitting interchange transactions) was expressed by Conn Valley's witness James Lahtinen.

Some of PSNH's latest testimony is really arguing for an island dispatch lambda. That island dispatch lambda is the additional cost the company would incur, if it operated in isolation without the effect of interchanging with the New England Power Pool. Now, that operation does not happen. It has not happened in the past. It is not likely to happen in the future ... . We have attempted to recognize what the financial impact is on the company given an additional small power production on one's system. And our endeavor was to keep the ratepayers no worst off by paying the small power producer an amount equal to the financial impact on a utility of additional small power production ... The island dispatch lambda really does not reflect anything other than a computer dispatch program calculation for financial billing purposes. It does not reflect the actual dispatch lambda that the utility experiences on its system. Tr. IV-106.

PSNH argues in its brief that the interchange transaction adjustment is unlawful because it violates the utility specific nature of avoided costs. The Commission rejects these arguments for, as the foregoing discussion indicates, the adjustment relates to the factual situations that these utilities face. The fact that they all are involved in the NEPOOL results in similar utility specific facts, thereby forming a basis for an interchange transaction adjustment that is applicable to all. To disregard each utility's involvement in the NEPOOL and the importance of the NEPOOL in this matter would be to unreasonably disregard reality. The Commission does not believe that PURPA, LEEPA or general laws of ratemaking would support such a result.

2.) Avoided Capacity

a.) Generation Capacity

[3] In estimating avoided generation capacity cost the parties to the settlement agreement adopted a common methodology for all New Hampshire utilities. Essentially, this methodology values generation capacity as the market value of generation capacity in excess of the NEPOOL's expected minimum reserve requirement levels.

The methodology for determining the value of generating capacity under the settlement agreement was stated in the settlement agreement as follows:

The value of generating capacity was estimated for 1987 from data on a recent purchase of generating capacity by UNITIL. After 1987 the market value of generation capacity was assumed to rise to reflect generation reserves in excess of reserves required by NEPOOL. In 1993, when it is expected that NEPOOL will no longer have generation capacity in excess of reserve requirements, the avoided generation capacity costs was equated to the first year economic carrying charge of a new combustion turbine. The parties agreed to use the NEPOOL Generation Task Force assumptions on the capital costs of the combustion turbine.

At a later date, the parties incorporated an identical base load unit into their avoided cost calculation. For purposes of the settlement agreement the parties agreed to use the IGCC as the

identical base load unit.

Exhibit #1, page 17.

Granite State's witness, John Levett, testified that the intent of the calculation of the value of avoided generation capacity "is to represent either avoided costs or an opportunity cost for additional sale of power to other utilities in the event that a QF becomes available." Tr. IV-24. Witness Levett also testified that NEP looks at opportunity costs in its least cost planning process. Tr. IV-29.

Conn Valley witness, James Lahtinen, summarized the rationale behind the assumptions concerning the value of avoided generation capacity prior to the incorporation of the IGCC proxy as follows:

For the years 1988 through 1992, We agreed that as the excess of generation reserves in the pool start falling closer and closer to ... the optimal reserve requirement margins, that the value of excess generation in the pool would tend to rise. And it would tend to rise because there would be more demand placed on the excess of generation reserves in the pool ... . [T]he value would also rise because the excess generation reserves would be dwindling and therefore the probability of loss of loads would decline and therefore the value of this capacity to the utility system would rise over time ... . [We] decided just to ramp it up in stages until such time as we went to the annualized cost of a new peak (sic) in 1993. Tr. IV-31.

PSNH argues that the settlement agreement's market based approach to measure avoided generation capacity costs does not adequately account for each individual utility need for capacity or its ability to defer capacity additions. PSNH takes the position that its avoided generation capacity costs are zero through 2001. Beginning in 2003, PSNH adopts the settlement agreement's IGCC proxy units cost calculation to estimate total avoided costs as discussed above.

The Commission rejects PSNH arguments that the settlement agreement does not adequately account for each individual utility's need for capacity based on its ability to defer capacity calculations. The fact that all the utilities are members of the NEPOOL results in similar utility specific facts, and forms a reasonable basis for using a common methodology for estimating avoided generation capacity costs. As members of the NEPOOL, the New Hampshire utilities have the opportunity to buy and sell capacity at market prices to minimize costs to ratepayers. Those utilities in need of capacity can purchase it at market based prices and, conversely, utilities with excess capacity can sell it at market based prices. The presentation of the parties to the settlement agreement, and the evidence with respect to the current and expected capacity situation in the power pool support the findings that the settlement agreement reflects an reasonable measure of the value associated with capacity made available by QFs. While we find this measure of the value of capacity appropriate, under what terms and conditions a QF would be entitled to a capacity value is a separate issue to be addressed in Phase III of these proceedings.

b.) Avoided Transmission Capacity

[4] PSNH and the parties to the settlement agreement are in general agreement concerning the treatment of avoided transmission capacity. We find this provision of the settlement agreement reasonable and therefore, it is accepted. Exhibit]1, page 19-20.

The parties agreed that a QF may request or the utility may conduct site specific studies to determine what adjustment, if any, should be made to avoided costs to reflect avoided transmission capacity costs. In recognition that for smaller QFs, the costs of such studies could have significant effect on the economics of the projects, the parties agreed to adopt a sliding scale for payment of avoided transmission capacity costs as follows[4](108) :

Page 412

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

Nameplate size of QF project	QF pays
1-100K	0%
101-200KW	20%
201-300KW	40%
301-400KW	60%
401-500KW	80%
500KW and over	100%

B. Input Assumptions

[5] The estimation of avoided costs necessarily requires, as input variables, assumptions concerning price forecasts (e.g. fuel, capital), load growth, capacity expansion plans, unit characteristics, and cost of capital. These input variables and assumptions are of critical importance as they are likely to introduce estimation errors into the avoided cost calculation that are much larger then that of various methodologies.

In evaluating the reasonableness of the input assumptions we have concentrated our analysis on the time period during which settlement agreement was reached. It is certainly conceivable that an update in input assumptions would result in different avoided cost estimates. However, the specific format of updates and when they occur is an issue to be determined in Phase III of this proceeding.

1.) Fuel Prices

Of the major assumptions that affect estimates of avoided costs, the forecast fuel price is probably the most significant and at times controversial.

The settlement agreement's fuel price forecasts are driven by a 1986 median price level forecast specific to each utility and a real price escalation rate calculated using the Blue Chip Economic Indicator (Blue Chip) GNP price deflator.[5](109) The real price escalation added to the GNP deflator is 2% for oil, .5% for coal, and 0% for nuclear fuel. The resulting forecasts are not sponsored by any single party in this proceeding but rather represent a consensus forecast for purposes of the settlement agreement. Dr. Ringo, testifying on behalf of several QFs, has correctly called the forecast "ad hoc" and "hardly elegant". However, as Dr. Ringo has pointed out, the appropriate measure to judge the forecast by is not elegance but whether the forecast is reasonable as the basis of estimating long term avoided costs.

PSNH's primary objection to the settlement agreement's fuel price forecast seems to be that at some future update, the settlement agreement fuel forecast methodology would be utilized regardless of the end result. PSNH proposes that each utility "utilize the long term fuel forecasts which they find appropriate for use in their Least Cost Planning process." Exhibit]37, Appendix 2, page 5. For purposes of developing its fuel price forecasts, PSNH relied upon fuel escalation data provided by Data Resources, Inc. (DRI). Tr. XII-92-103.

The forecast of fuel prices, which have been extraordinarily volatile for more than a decade, has a major impact on estimates of avoided costs. The evidence in the record indicates that there are significant divergence among the forecasts utilized by the utilities for internal planning purposes. However, the parties to the settlement agreement have recognized that the actual fuel price escalation rates will be virtually identical for all New Hampshire utilities and, therefore, have agreed upon a consensus forecast methodology. While there is no evidence in the record to suggest that the PSNH-DRI forecast is not reasonable, we find that the consensus forecast in the settlement agreement better meets the goal of consistency, is reasonable and, therefore, appropriate for calculating avoided costs in this proceeding.

2.) Inflation Rates

The settlement agreement uses the Blue Chip GNP price deflator as the inflation factor. PSNH argues that each utility should use its own specific inflation forecast up until the time the IGCC's proxy unit is added, at which time it has agreed to use

Page 413

the settlement agreement forecast.

We find it appropriate to use an inflation forecast that is consistent among the utilities. The settlement agreement inflation forecast is reasonable and accomplishes this consistency.

3.) Generation Capacity Plans

Both the settlement agreement and PSNH agree that each utility should present a schedule of its capacity needs reflecting existing committed and uncommitted sources.

We have reviewed the capacity expansion plans submitted by the utilities executing the settlement agreement and find them reasonable for the purposes at hand. With respect to the capacity expansion plans utilized by PSNH to calculate its avoided cost several issues were raised during the hearing which we discuss below.

a.) Estimate of Existing QFs

The parties to the settlement agreement stated that each utility's schedule of capacity needs should reflect "each utility's best current estimate of [QF] generation." Exhibit #1, page 12. It was pointed out by Mr. John Levett, on behalf of Granite State that the more committed generation, including QFs, in the base case of the production costing model calculation, the lower the avoided cost estimates. Tr. II-110.

With respect to the amount of QFs included in Granite State's production cost modeling base case, all the QF projects, with the exception of the Ocean State project, have signed finalized contracts and Granite State views the level of QF included in their base case as conservative. Tr.

II-16. Conn Valley's estimate of QFs in its base case includes those which are on-line, have long term contracts, or have executed a letter of intent with the Vermont Power Exchange, an agent of the Vermont Public Service Board. Tr. IV-15.

PSNH utilized a number of estimates of QF capacity in the base case of its production costing model calculation of avoided costs. In its original prefiled testimony (May, 1986), PSNH used 238 MW of nameplate capacity. Exhibit #62-A, Tr. XIII 5-6. PSNH indicated that the 238 MW correspond to the level of QFs that had been approved by the Commission to date. Tr. X-109-110. In PSNH's supplemental testimony (December, 1986), PSNH increased the amount of QF in its base case to 365.2 MWs of nameplate capacity. Id. Finally, in response to a data request of Granite State in which PSNH was requested to calculate its avoided cost under the settlement agreement methodology and input assumptions (Exhibit #35), PSNH used 697 MWs of QF nameplate capacity.

PSNH argued that there is a need to vary the level of QF assumed in the base case depending upon the purpose for which the avoided cost estimate is used.

We find that there is no basis in the record to justify PSNH to use varying levels of QF capacity depending upon the purpose for which the avoided costs estimates is used. Allowing PSNH to use a higher level of QFs will not only result in an understatement of avoided costs for PSNH, but clearly defeats the goal of consistency. We therefore require PSNH to use a base case level of 242 MW of QF nameplate capacity in its production costing calculation of avoided costs. This figure includes the amount of QF power that was on-line, under contract or had obtained a final rate order from this Commission by the time of the hearings.

b.) Hydro-Quebec II

It was necessary for each utility to make certain assumptions about the treatment of Hydro-Quebec II in its production cost modeling calculation of avoided energy costs. A utility could model Hydro Quebec II as a financial transaction which assumes that the utility plans to participate in the Hydro Quebec II savings fund.[6(110)] In contrast, a utility could model Hydro-Quebec II as energy available to meet own load

Page 414

which assumes the utility would not participate Hydro-Quebec savings fund but rather negotiate a direct arrangement with HydroQuebec outside of the savings fund.

Granite State modeled Hydro-Quebec II as a financial transaction and its witness, Mr. Levett, stated that this treatment is consistent with its internal planning. Tr. II-111. Conn Valley witness Mr. Lahtinen stated that its treatment of Hydro Quebec II as a energy to meet own load is consistent with past long term studies the company had conducted. Tr. II-111.

PSNH's treatment of Hydro Quebec II differed in its calculation of avoided costs in its original (May, 1986) and supplemental (December, 1986) testimony. PSNH modeled Hydro Quebec II as a financial transaction in its original testimony for the period November, 1983 — October, 2000. Tr. XII-29. However, in its supplemental testimony PSNH modeled Hydro Quebec II as energy available to meet its own load. Id. The affect of this change in the treatment of Hydro Quebec II is to lower PSNH's estimate of avoided cost.

PSNH has provided no convincing evidence for treating Hydro Quebec II as energy to meet own load as opposed to a financial transaction and participating in the Hydro-Quebec savings fund. On the contrary, the only analysis in the record that PSNH has performed on the benefits of Hydro Quebec II demonstrates that the financial benefits of participating in the Hydro Quebec II savings fund will be positive for PSNH for the years 1994 through 2000. Exhibit]67. We, therefore, require PSNH to model Hydro Quebec II as a financial transaction for purposes of calculating avoided costs in this proceeding.

4.) Unit Characteristics

The parties to the settlement agreement and PSNH agreed to use the New England Power Exchange (NEPEX) data as reflected in its NX12 forms with respect to unit characteristics and NX4 forms for replacement fuel costs. The procedure provides a reasonable and consistent source for these input variables.

5.) In-Service Dates for New Units

The parties to the settlement agreement and PSNH, agreed to use an in-service date of Hydro Quebec II corresponding to the winter peak of 1990-1991. Exhibit #1, page 13; Exhibit #37, Appendix 2, page 5. The parties also agreed to use a July 1, 1987 commercial operation date of Seabrook in the avoided costs calculation. Exhibit #1, page 13; Exhibit]37, Appendix 2, page 5. We recognize that these in-service dates may not reflect the current status of these projects. However, in keeping with our previous determination to cut off the update of data, we find the recommendation of the parties with respect to these in-service dates reasonable for purposes of this proceeding.

6.) Load Forecasts

With respect to the load forecasts used by the utilities, the parties to the settlement agreement and PSNH agreed that each utility should use its own most recent load forecast. Exhibit #1, page 13; Exhibit #37, Appendix 2, page 6. Granite State used the same load forecast in its avoided cost calculations that it uses for least cost planning.[7(111)] PSNH used its most recent load forecast that is on file here at the Commission, version 86k. PSNH also uses this forecast for strategic planning purposes. Tr. X-139-141, X-101.

The parties to the settlement agreement have adopted the load forecast of the utilities executing the settlement agreement. The evidence on the record indicates that the load forecast used by PSNH is consistent with that used by the other utilities. We find these load forecasts reasonable for the purposes at hand.

7.) Unit Life Extensions

Both the parties to the settlement agreement and PSNH agreed that each utility

could model unit life extensions of existing units rather than assume retirements. Exhibit #1, page 14; Exhibit #37, Appendix 2, page 6. While all parties agreed that an assumption of unit life extension may be appropriate, a debate arose during the hearings with respect to the cost effectiveness and rationale behind the unit life extensions assumed by PSNH in its December,

1986 supplemental testimony.

PSNH utilized different assumptions in its original May, 1986 testimony than in its December, 1986 testimony. PSNH did not include life extensions of the Schiller or Merrimack units in its original May, 1986 testimony. Tr. VI-11; Exhibit #37, Bowie Testimony, Attachment 2, page 2 of 2. PSNH also did not include life extensions for the Lost Nation combustion turbine or its White Lake jet. Id. PSNH also did not include these life extensions in its most recent marginal cost study. However, in its December, 1986 supplemental testimony PSNH chose to include life extensions of these units.

The evidence on the record indicates that PSNH did not prepare any analysis to justify its change in the assumptions on unit life extensions. We therefore require PSNH to model its avoided cost using its life extensions as filed in its original May, 1986 testimony, for we find those life extensions reasonable based upon the evidence in this docket.

8.) Cost of Capital

The parties to the settlement agreement and PSNH were in agreement that each utility should use the most recent estimated long term cost of capital it employed for planning purposes. Exhibit #1, page 13; Exhibit #37, Appendix 2, page 6. The parties also agreed to adopt NEP's cost of capital at the time the proxy unit is introduced. The Commission finds this provision reasonable.

9.) Tax Laws

The parties to the settlement agreement and PSNH agreed to use the 1986 tax laws as an input assumption into the cost calculation. Based on the time the settlement was executed we find this assumption reasonable.

10.) Reporting Conventions

All the parties, including PSNH, agreed that the utilities should report the long term avoided costs and data underlying the calculation of the avoided costs in a consistent format. Exhibit #1, page 14; Exhibit #37, Appendix 2, page 6. The avoided costs are reported for thirty-five (35) years in terms of annual average energy values (in cents per KWH) and annual capacity value (in dollars per KW year) at the generation level. Id. The parties to the settlement agreement also agreed that Conn Valley, Granite State, and PSNH should supply on and off-peak breakdowns of the annual energy value. Id.

The parties agreed that each utility will provide an explicit decomposition of the decremental block of avoided energy from which the annual island lambda was derived, including the utility's own load requirements against capacity over time. The parties also agreed that each utility will show the revenue requirements used in computing economic carrying charges.

We find these reporting conventions reasonable.

C. Summary of Findings

Of the proposals before us, the settlement agreement methodology and input assumptions provide the most reasonable and accurate estimates of long term avoided costs for all New Hampshire utilities. Long term avoided cost estimates for the UNITIL Companies, Granite State and Conn Valley, calculated pursuant to the settlement agreement, have been submitted and are

shown in Attachment 1 of this Report. For purposes of this proceeding, we require PSNH to calculate its long term avoided costs pursuant to the settlement agreement and file them along with all supporting materials as detailed herein.

Our Order will issue accordingly.

Page 416

[Graphic Not Displayed Here]

Page 417

ORDER

Upon consideration of the foregoing INTERIM REPORT ON PHASES I AND II, it is

ORDERED, that long term avoided costs shall be calculated as provided for in the foregoing Report; and it is

FURTHER ORDERED, that PSNH shall file within 15 days of the date of this Order its calculations of avoided costs that are consistent with the foregoing Report; and it is

FURTHER ORDERED, that consideration of specific aspects of NHEC's avoided costs is deferred until Phase III as detailed in the foregoing Report; and it is

FURTHER ORDERED, that this Order, while disposing of certain issues in this docket, is not a final order for purposes of RSA Chapter 541 in this docket but shall instead become final upon issuance of the Commission's report and order dealing with the issues in Phase III of this docket.

By order of the Public Utilities Commission of New Hampshire this fourteenth day of September, 1987.

FOOTNOTES

*Commissioner Linda G. Bisson did not participate.

[1]Mathematically lambda is the marginal cost associated with minimizing costs while providing adequate generation to supply load.

[2]In reflection of the varying size of the respective utilities, the parties to the settlement agreement agreed on the following decrement amounts: NEP/Granite State-100 MW, PSNH-50 MW, CVEC/Conn Valley-20 MW, NHEC-(See PSNH), and the UNITIL Companies-10 MW. Exhibit #1, page 10.

[3]The Commission is cognizant of the reservation expressed by Granite State witness John Levett, as to whether the 1% adjustment recommended in the settlement agreement was intended to include avoidable operating and maintenance costs. Tr. IV-21.

[4]The QF will continue to pay the full costs of the interconnection study.

[5]Blue Chip Economic Indicator, October 10, 1985.

[6]The Hydro Quebec savings fund was established for the purpose of allocating and distributing to member utilities all savings which are realized by NEPOOL as a result of NEPOOL Energy Transactions made available by the project.

[7]During the hearings Granite State informed all parties that it had inadvertently not used its most recent load forecast. However, the evidence indicates that this change would not materially affect its long term avoided cost estimates.

==========

NH.PUC*09/15/87*[60339]*72 NH PUC 418*New England Alternate Fuels, Inc.

[Go to End of 60339]

72 NH PUC 418

Re New England Alternate Fuels, Inc.

Additional party: Energy Tactics, Inc.

DR 86-87
Order No. 18,830

New Hampshire Public Utilities Commission

September 15, 1987

ORDER approving a long-term small power production rate filing.

---

1. PROCEDURE, § 16 — Production of evidence — Commission directed negotiations — Presentation of proposed settlement.

[N.H.] Any party to negotiations directed by the commission in which agreement has not been achieved may present its own proposed settlement of the issues to the commission once the matter again becomes the subject of litigation. p. 420.

2. COGENERATION, § 24 — Rates — Eligibility for a particular long-term rate — Effect of delays caused by litigation and negotiation — Small power production project.

[N.H.] Delays caused by litigation and negotiation prior to the approval on long-term small power production rate filings should not be allowed to render a small power production project ineligible to obtain the rate for which it applied. p. 420.

3. COGENERATION, § 24 — Rates — Conditions on approval of a long-term rate filing — Small power production project.

[N.H.] Approval of a long-term rate for a small power production project was conditioned upon the project achieving commercial operation by the later of the end of the 1988 power year or six months after the resolution of all litigation, including appeals, concerning the validity of

the rate order. p. 421.

4. COGENERATION, § 33 — Rates — Rate design factors — Small power production project.

[N.H.] In approving the long-term rate filing of a small power production project the

Page 418

commission accepted the following rate design proposal: (1) A ten year escalating energy and capacity rate subject to a 90% three-year cap on levelization applicable to 500 kilowatts of capacity; (2) Energy in excess of that produced from 500 KW would be priced at the short-term as available rate; (3) Energy sold after year ten would be offered at a 5% discount to the avoided cost of the interconnecting utility. p. 421.

APPEARANCES: Brown, Olson & Wilson by Michael Walker, Esq. for New England Alternate Fuels, Inc. and Energy Tactics, Inc.; Thomas B. Getz, Esq. for Public Service Company of New Hampshire; Dr. Sarah P. Voll and Mark Collin for the Commission Staff.

By the COMMISSION:*(112)

REPORT

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, 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). [DR 85-215] NEAF/ 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. A hearing was held on May 7, 1986 to investigate the eligibility of the project, given its projected variability in output, for long term levelized rates. At the close of the hearing NEAF/ET and Public Service Company of New Hampshire (PSNH) were directed to attempt to resolve issues of technology and rate making through data requests and negotiation. On October 1, 1986, PSNH filed comments with the Commission objecting to the eligibility of NEAF/ET for long term levelized rates. NEAF/ET responded with comments on December 11, 1986 and requested additional time to pursue negotiations. It also advised the Commission that its lease had expired on the Nashua site and therefore the only project under consideration was the Manchester site. The parties were unable to negotiate an agreement and on July 9, 1987 the Commission held a hearing in which NEAF/ET presented, inter alia, alternative proposals for a design of long term rates based on the DR 85-215 values. On July 14, 1987, NEAF/ET filed a letter en- closing copies of the proposed rates that hitherto had been contained only in confidential settlement offers between NEAF/ET and PSNH. On August 3, 1987 NEAF/ET and PSNH filed briefs.

I. POSITION OF THE PARTIES

NEAF/ET requests approval of one of three rate designs, each based on the DR 85-215 rates and any of which would allow the project to be developed. The three alternatives as described in Brief are:

1. A 20 year fully levelized energy and capacity rate, subject to the 90%-3 year cap on levelization (original proposal).

2. A 10 year fully levelized energy and capacity rate subject to the 90%-3 year cap on levelization, applicable to 500 KW of capacity. Energy in excess of that produced from 500 KW would be priced at the DR 85-215 annual rates for years 1-5, and DR 85-215 levelized rate for years 6-10.

3. A 10 year escalating energy and capacity rate subject to the 90%-3 year cap on levelization, applicable to 500 KW of capacity. Energy in excess of that produced from 500 KW would be priced at the short term as available rate. Energy sold after year 10 would be offered at a 5% discount to PSNH's avoided cost.

NEAF/ET states that it is eligible for rates

pursuant to DR 85-215 in that it is a qualifying facility (QF) and has complied with the requirement of a 45 day prior request for interconnection. Further, NEAF/ET alleges that it has demonstrated its ability to fulfill the representations in its filing in regard to an ability to achieve commercial operation as specified in its filing, and its ability to repay front loaded amounts either in the event of a service termination through a junior lien or through its operation over the life of the rate obligation. In regard to the on-line date, NEAF/ET avers that permit requirements, site specific studies, adequate lease arrangements and joint venture arrangements were in place at the time of the rate filing. However, negotiations with PSNH and redesign of rate structures to satisfy Commission concerns have caused unavoidable delay, and therefore NEAF/ET requests an extension of the on-line date from power year 1987 to power year 1988.

PSNH in Brief identifies two issues currently before the Commission. The first is the substantive issue of the eligibility of NEAF/ET for the DR 85-215 rates given the level of developmental maturity at the time of its filing. PSNH cites as evidence of lack of sufficient maturity that NEAF/ET had not procured financing, had not resolved the issue of its lease with the City of Manchester, had inadequately addressed the fuel procurement issue, had not addressed the question of the viability of the Manchester site independent of the Nashua site and had left unclear the size of the project. PSNH also states that the uncertainty of the landfill methane technology renders the project ineligible for front end-loaded rates. The second issue identified by PSNH is the admissibility of the NEAF/ET March 12, 1987 letter to PSNH into evidence. PSNH objects to the admission of the letter on the grounds that it pertains to confidential settlement negotiations.

II. COMMISSION ANALYSIS

[1] The Commission finds that the second issue identified by PSNH is moot as the March 12, 1987 letter that NEAF/ET sent PSNH in the course of confidential negotiations has not been admitted into evidence. Any party to negotiations directed by the Commission in which agreement has not been achieved may present its own proposed settlement of the issues to the Commission once the matter becomes again the subject of litigation. In the instant case NEAF/ET has submitted proposed modifications to the rate design as proposed in its original

request to the Commission under cover letter dated July 14, 1987. We find that this procedure is reasonable and that it does not offend the confidentiality of settlement negotiations. We are not making any finding concerning the reasonableness of PSNH in rejecting the NEAF/ET proposals as part of a negotiated settlement.

Having reviewed the initial rate request, the exhibits and transcripts of the two hearings and the briefs, the Commission, with some conditions, will approve a long term rate filing for NEAF/ET.

While the project before us is the first to be based on landfill methane gas recovery, similar projects have previously operated in New Hampshire. The 85 KW Hadley & Bennett project operated in 1982 and 1983 and the 60 KW Shugah Vale project has operated since 1984. Both of these facilities were sited at dairy farms, with Hadley & Bennett's cessation of operations resulting from the sale of the farm rather than any failure of the cogeneration equipment. Mr. Drake on behalf of ET has testified that his company has developed six projects on Long Island, one in New Jersey, and is currently installing an eighth in upstate New York. Further, both the process of extracting methane gas from landfills and the techniques of operating gas fired generators are well established technologies.

[2] PSNH has noted that the project's current representations in regard to the lease, project size, viability of the Manchester facility divorced from the Nashua site and rate design differ from these made at the time of filing and cites these changes as evidence of immaturity. We find rather that these modifications reflect the efforts

of NEAF/ET to accommodate the concerns of staff and PSNH. It would be unfair to penalize the petitioner for its flexibility. Similarly, we will allow NEAF/ET to extend its on-line date by one year, as we find that the delays caused by the litigation and negotiations prior to the approval of the rate should not be allowed to render NEAF/ET ineligible to obtain the rate for which it applied.

[3, 4] However, we are concerned that NEAF/ET had not pressed its negotiations with the utmost diligence and are particularly concerned that NEAF/ET has not yet finalized its financing. Mr. Drake has assured us that the company will be able to obtain financing from the same investors who financed his previous projects. In Brief, NEAF/ET has averred that is "capable of financing the project, installing the necessary equipment and commencing operations within six months of the date of a rate order issued by this Commission, assuming PSNH does not appeal the rate". Brief at page 13. We will allow the extension of the on-line date but put NEAF/ET on notice that this approval will be null and void if its Manchester project fails to achieve commercial operation by the later of the end of power year 1988 (August 31, 1988) or six months after the date on which all litigation, including appeals, concerning the validity of our approval, is resolved.

We accept Proposal 3 for the design of NEAF/ET's proposed rate, with the maximum capacity to which the long term rate applies being 505 KW and the maximum energy 4040 MWH per year. The capacity eligible for a capacity payment is subject to the confirmation of the capacity audit to be performed by the NHPUC engineering department according to the standard

procedures. No capacity payment is granted for capacity in excess of 505 KW and all energy in excess of 4040 MWH will be priced at the short term as available rate. The approved 10 year rate is therefore as follows:

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

Year	All Hours	On Peak	Off-Peak	Capacity
1988	6.06	7.10	5.28	$36.61
1989	6.06	7.10	5.28	36.61
1990	6.06	7.10	5.28	36.61
1991	6.37	7.47	5.55	38.50
1992	6.69	7.85	5.83	40.48
1993	7.04	8.25	6.14	42.57
1994	7.40	8.67	6.46	44.75
1995	7.77	9.11	6.78	47.07
1996	8.17	9.58	7.13	49.50
1997	8.59	10.07	7.49	52.05

Energy sold to PSNH beyond year 10 will be priced at no greater than 95% of PSNH's avoided cost, as calculated at the time and subject to whatever conditions the Commission at that time finds reasonable to impose. We will also accept NEAF/ET's offer of a junior lien on the project.

Our order will issue accordingly.

ORDER

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

ORDERED, that the 10 year long term rate as described therein be, and hereby is, approved, and it is

FURTHER ORDERED, that this approval will become null and void if NEAF/ET fails to achieve commercial operation by the later of the end of the 1988 power year or six months after the date on which all litigation, including appeals, concerning the validity of this order is resolved.

By Order of the Public Utilities Commission of New Hampshire this fifteenth day of September, 1987.

FOOTNOTES

*Commissioner Bisson did not participate.

==========

NH.PUC*09/15/87*[60340]*72 NH PUC 422*Customer-owned Coin-operated Telephones

[Go to End of 60340]

72 NH PUC 422

Re Customer-owned Coin-operated Telephones

DRM 87-086

Order No. 18,831

New Hampshire Public Utilities Commission

September 15, 1987

ORDER adopting rules for the provision of customer-owned, coin-operated telephone service.

---

1. SERVICE, § 456 — Telephone — Customerowned, coin-operated telephones — Rules and regulations.

[N.H.] Proposed rules for the provision of customer-owned, coin-operated telephone (COCOT) service were adopted, with the following amendments: (1) the addition of definitions and other material intended to clarify the requirements embodied in the rule; (2) the replacement of complex financial accounting requirements imposed on COCOT providers with a simplified financial statement consisting merely of a statement of total revenues; (3) correction of the height required for wheelchair access to 48 inches; (4) inclusion of a provision granting COCOT service providers the option of providing either dial tone first service or coin free access to an operator or 911. p. 424.

2. SERVICE, § 456 — Telephone — Customerowned, coin-operated telephones — Rules and regulations.

[N.H.] In adopting rules for the provision of customer-owned, coin-operated telephone (COCOT) service, the commission specifically rejected arguments that the Federal Communications Commission preempted state regulation of COCOT service or mandated the competitive offering of such service. p. 425.

3. SERVICE, § 456 — Telephone — Customerowned, coin-operated telephones — Rules and regulations.

[N.H.] In adopting a rule governing customerowned, coin-operated telephone (COCOT) service, the commission rejected the argument that a provision of the rule requiring COCOTs to take service under measured service rates was unfair in that it precluded operation in areas where measured service was unavailable; it was concluded that (1) the unavailability of measured business service rates would have a de minimus effect on COCOT operations because measured business service would soon be available in almost every exchange, and (2) the reason for having COCOTs take service under measured service rates — i.e., to determine whether COCOTs are a burden on the telephone system — had not gone away. p. 425.

4. RATES, § 565 — Telephone — Customerowned, coin-operated telephones — Maximum rate for local calls.

[N.H.] A maximum rate for local calls made from a customer-owned, coin-operated telephone (COCOT) was included in a rule governing the provision of COCOT service notwithstanding the claim that COCOT service providers could not make a profit at the allowed maximum rate; it was concluded that the record evidence was insufficient to support the claim that the maximum rate for local calls would preclude profitable operation. p. 426.

APPEARANCES: Mary C.M. Hain, Esq. on behalf of the Staff of the Public Utilities Commission.

By the COMMISSION:

REPORT

I. Procedural History

On May 14, 1987, the Commission filed a cover sheet for a fiscal impact statement and the text of a Customer-Owned, CoinOperated Telephones (COCOTS) (Series 408) proposed rule with the Legislative Budget Assistant. On May 21, 1987 a fiscal impact statement (FIS 87:065) was returned to the Commission for review and submission to the Administrative Procedures Division, Office of Legislative Services, in accordance with the August, 1985 New Hampshire Rulemaking Manual.

The COCOTS rulemaking notice form was

Page 422

served June 1, 1987 on the Administrative Procedures Division, Office of Legislative Services (OLS). OLS returned the notice due to procedural inadequacies.

A revised cover sheet for fiscal impact statement was filed on June 15, 1987. This filing and future filings are intended to comply with the new requirements imposed by N.H. Rev. Stat. Ann. 541-A:3 (supp. 1987) and the regulations promulgated pursuant thereto. On June 17, 1987 the Legislative Budget Assistant returned a revised fiscal impact statement (FIS 87:076) to the Commission.

A revised rulemaking notice form was submitted by the Commission on June 18, 1987. The Legislative Attorney for Legislative Services sent comments to the Commission concerning potential objections to the rules pursuant to N.H. Rev. Stat. Ann. §541-A:3-e, IV (supp. 1986). A hearing was held before the Commission on August 25, 1987. There were no motions to intervene so the Staff was the only party to the proceeding.

II. Position of the Party

The Staff of the Commission made a statement supporting the rule. It submitted recommendations (Exhibit 3) to the Commission to make corrections in light of the comments received from the Legislative Attorney of Legislative Services (Exhibit 2).

The Staff supported the rulemaking for the following reasons:

1. The rules were a codification of the Commission's existing policies concerning COCOTS.

2. The rules will allow the Commission to determine an application to provide COCOT service on a streamlined basis — if an applicant complies with the rules, the application is automatically accepted.

3. The rules will affect mainly small businesses so the rule attempts to embody a simplified procedure. It is written to require minimal reporting and record keeping procedures.

4. The rule is necessary to comply with the Commission's obligations to specify the information needed to reach a decision on a petition to do business pursuant to N.H. Rev. Stat. Ann. §365:8 (1984) and to set forth the nature of the formal procedures available including a description of forms and instructions pursuant to N.H. Rev. Stat. Ann. §541-A:2(b) (supp. 1984).

The recommended corrections to the rules were as follows.

1. Definitions were added for the following terms: "Accumulated Depreciation Reserve," "Measured Business Service," "Tariff," "Interexchange Carriers," "Equal Access," and "Hearing-Aid Compatible"

2. Other amendments were added which intended to clarify but not to change the requirements embodied in the rule.

III. Public Statements

The public statements made opposed the rules generally and specifically. Richard B. Thompson stated that COCOT service is provided in a truly competitive atmosphere and that regulation is detrimental to competition. He stated that the financial accounting requirements are too complex for COCOTS. He recommended that if a financial statement is necessary it should consist merely of a statement of total revenues and expenses.

Harry T. Matthews noted that the rule was incorrect in that it required a 54 inch height of COCOTS for wheelchair access. The height required for wheelchair access is 48 inches. He argued that the price for local calls should be set by the market. Mr. Matthews asserted that §408.07(a) (which requires the provision of dial tone first to provide coin-free emergency access to an operator or 911 where available) should be

Page 423

stricken unless New England Telephone Company, Inc. is required to remove all of its pay phones which do not provide dial tone first and install phones which comply with this rule. Matthews also averred that the provision of the rule that requires COCOTS to take service under measured service rates is unfair because it does not allow them to operate in areas where measured service is not available. He also argued that it was impossible for COCOTS to operate if they are required to charge the same amount for local service as the local exchange company; i.e., if they are, for example, making a $60 per month lease payment.

Mr. Minkema argued that hotels and motels are allowed to place a surcharge on local calls. Therefore, COCOTS should be able to place such surcharges. Mr. Minkema also argued that the F.C.C. has given the state commissions a mandate to make COCOTs competitive.

IV. Commission Analysis

[1] We will approve the proposed rulemaking, with the following amendments:

1. the corrections recommended by the Staff to address the concerns set forth in the Legislative Attorney's comments;

2. a simplified financial statement, consisting merely of a statement of total revenues;

3. correction of the height required for wheelchair access to 48 inches; and

4. COCOTs will be given the alternative of providing coin-free or dial tone first emergency access.

In dockets DE 84-174, DE 84-159, DE 84-152, Re Coin Operated Telephone Policies, Report and Order No. 17,486 (March 11, 1985) we directed the Staff to submit to the Commission a proposed rule for COCOT service (70 NH PUC 89, 98). In that order we stated the conditions that would be applicable to the Petitioner, Comm-Tech Pay Services, to wit:

1. [All COCOT instruments] shall be registered and approved by the FCC;

2. There will be no restrictions placed on [their location of COCOT instruments] other than the availability of measured business service;

3. [COCOTs] shall be hearing-aid compatible;

4. [COCOTs] shall provide dial tone first to assure emergency access to operators;

5. [COCOTs] shall provide for local and toll access;

6. [COCOTs] shall allow access to other common carriers;

7. [COCOTs] shall be clearly marked as to ownership and maintenance responsibility;

8. [COCOTs] shall be connected only to measured service lines at applicable tariffed rates;

9. [COCOTs] local rates shall be the same as those which apply to the New England Telephone system;

10. [COCOTs] shall provide toll-free calling within municipalities;

11. The customer of record upon whose line a coin phone is installed shall be responsible for adherence to all applicable laws, rules and tariff provisions;

12. Surcharges for toll calls [are] authorized, and pricing policies shall be

clearly marked at the coin phone location; and

13. A coin phone provider shall notify this Commission by letter of its intent to install such phones prior to their installations.

Part of our decision in the above dockets simply incorporated restrictions already in place on the Federal level. In Connection of Terminal Equipment to the Telephone Network, 74 C.F.R. §68.316, the Federal Communications Commission (F.C.C.) requires all coin telephones located at public, or semipublic locations to be hearing-aid compatible. Therefore, we include hearing-aid compatibility as a requirement under our rules.

At 47 C.F.R. §68.102 the F.C.C. requires that all terminal equipment be registered in accordance with their rules or connected through registered protective circuitry. Our rules incorporate this requirement.

[2] In the public comments, it was argued that the F.C.C. has given the State Commissions a mandate to make COCOTS competitive. This is not the case. In Re Registration of Coin Operated Telephones Under Part 68 of the Commission's Rules and Regulations, Memorandum

Opinion and Order, FCC 84-270 (June 25, 1984) the F.C.C. specifically did not preempt state regulation of COCOT service or mandate competition. It stated, to wit

[T]he Commission's decision to register instrument implemented coin telephones does not necessarily affect state policies or regulations governing the resale of intrastate toll and exchange services ... .

In our previous decision on COCOTS we determined that COCOTS were within the clear meaning of the statute defining public utilities, N.H. Rev. Stat. Ann. §362:2 (1984). Re Coin Operated Telephone Policies, at 15. We distinguished between the paging market which is not subject to our jurisdiction under Re Omni Communications, 122 N.H. 860 (1982) and the pay phones market. We determined that

Pay phones are an actual extension of the telephone lines and are designed for use in normal and comprehensive conveyance of telephone messages as contemplated by the legislature in RSA 362:2. Radio paging devices, on the other hand, use the telephone lines for a limited purpose and are used by individuals as opposed to the general public. Pay phones must be available for public use, should be reliable, available in a variety of locations throughout the state and be reasonably priced.

Re Coin Operated Telephone Policies, 70 NH PUC at 96.

We also noted that consumers can shop around for a paging vendor. In the public statements, many witnesses noted that if customers could not install a COCOT that the local exchange company might not install a phone at that location. This does not establish competition. In fact, it appears that the COCOT owner will have a monopoly for that location.

None of the commentors provided any specific evidence, or any legal theory to provide a basis to overturn our previous finding that COCOTS are public utilities.

We agree with the comments that the financial accounting statement should be simplified. The amount of information requested would be too burdensome for small businesses. Therefore, we are amending Form F29 to simply require a statement of the total operating revenues of the business. If it becomes necessary to have other information, for example concerning expenses, as part of a generic rate case proceeding, we can request that information at that time.

[3] We will continue, via the new rule, to require COCOTS to take service under measured business service. The commentors arguments are not persuasive. Measured business service is now available in all of New

England Telephone and Telegraph Company's exchanges. In addition, many of the independent telephone companies have converted to digital equipment. Therefore, measured business service is or will soon be available in almost every exchange. Therefore, the unavailability of measured business service rates will have a di minimus effect on the commentors ability to compete. In addition, the reason for having COCOTS take service under these rates (to determine whether COCOTS are a burden on the telephone system, Id. at 17 [70 NH PUC 89]) has not gone away. That is to say, in service areas which have not yet been converted to digital, we do not want to impose further customer load on portions of the telephone

network that are reaching a saturation point. Id. at 18 (70 NH PUC 89).

[4] The commentors argued that there should be no maximum rate for COCOT local telephone service. The Commission was not persuaded by their argument that COCOTS providers cannot make any profit at the allowed local call rate. First, the commentors only provided evidence concerning the cost of doing business using a COCOT rented from a particular company. No evidence was provided using a purchased phone. In addition, the commentors did not provide any evidence of their ability to earn revenues based on the toll surcharge allowed under the rules.

The commentors were incorrect in their assertions that hotels and motels may charge surcharges on local or toll calls. COCOT service is the only type of resale telephone service currently allowed by this Commission.

We would also like to note that we have changed the rule to require that COCOTS provide dial tone first or to provide coinfree emergency access to an operator or 911 where available. We recognize that dial tone first may not be available from exchanges served by central offices that utilize step-by-step or cross bar switches. Therefore, coin-free or dial tone first will be adequate to provide the emergency access that is in the public interest.

ORDER

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

ORDERED, that the proposed CustomerOwned, Coin-Operated Telephones rule (series 408) be, and hereby is, approved, subject to the amendments set out in this Report, and as set forth in the attached "final proposal;" and it is

FURTHER ORDERED, that the Executive Director and Secretary of the Commission shall file the final proposal of the rule with the Director of Legislative Services for approval on or before September 18, 1987.

By order of the Public Utilities Commission of New Hampshire this fifteenth day of September, 1987.

==========

NH.PUC*09/15/87*[60341]*72 NH PUC 426*Public Service Company of New Hampshire

[Go to End of 60341]

72 NH PUC 426

Re Public Service Company of New Hampshire

DR 87-151
Fifth Supplemental Order No. 18,832
New Hampshire Public Utilities Commission
September 15, 1987

ORDER denying, without prejudice, requests for findings concerning issues related to

investment in the Seabrook Unit I nuclear generating facility.

---

1. PROCEDURE, § 30 — Disposal of issues — Request for findings prior to hearing — Reasons for denial.

[N.H.] A request, by the Campaign for Ratepayer Rights, that the commission find, prior to a scheduled hearing on the issue, that there was no need to include investment in Seabrook Unit I in the rate base of an electric utility was denied without prejudice; the commission found that the request resulted from a misinterpretation of statements made in a prior order and deferred a decision on the matter until after the scheduled hearing. p. 427.

Page 426

2. PROCEDURE, § 30 — Disposal of issues — Request for findings prior to hearing — Reasons for denial.

[N.H.] The commission denied without prejudice a request that it make certain findings, prior to a scheduled hearing on the issues, concerning investment in the Seabrook Unit I nuclear generating facility; the commission declined to make the findings because the request failed to indicate what record evidence would support such findings. p. 427.

---

i. VALUATION, § 224 — Construction work in progress — Rate base treatment — Seabrook Unit I.

[N.H.] Discussion, in a procedural order, of the need to make findings prior to a scheduled hearing on issues concerning the rate base treatment of construction work in progress associated with the Seabrook Unit I nuclear generating facility. p. 427.

By the COMMISSION:

Report Regarding CRR Request for Findings

On September 14, 1987, the Campaign for Ratepayers Rights (CRR) requested that the Commission make various findings as a result of its proceeding set for hearing on September 16, 1987. In that filing, CRR seems to request three findings. The Commission herein denies the request for all three findings. Normally, the Commission would act on a request for findings in an order making findings of facts after the hearing. However, due to various aspects of the CRR request, the Commission acts upon its request before the September 16, 1987 hearing to allow CRR the opportunity to make other requests or to adjust its actions at the hearing accordingly.

[1] [i] The first finding that CRR requests relates to the issue "a" set forth in the Supreme Court's order of September 2, 1987. The Court expressed this issue as follows:

a. The claimed need to include some of the company's investment in the Seabrook I reactor in the company's rate base in order to obtain the cash required by the end of 1987 to make interest payments as they come due, to pay off existing debt as it matures and to pay for the expansion of

services to customers.

Rather than asking us to make a finding based on evidence to be presented at the September 16th hearing or to take notice of various items, it seems that CRR Counsel is requesting us to first reiterate a matter regarding our authority that CRR alleges we have already found. Specifically, CRR claims that we have already determined that we may grant an emergency rate increase if an emergency exists without regard to N.H. Rev. Stat. Ann. § 378:30-a. For this finding, CRR relies upon page four of the Commission's Report on Prehearing Conference of August 27, 1987 and Order No. 18,805 (72 NH PUC 373) (August 31, 1987). Based upon this first finding, CRR asks that the Commission then find that there is no need to place Seabrook in rate base in order for PSNH to obtain cash needed by the end of 1987.

With regard to CRR's statement on Commission authority, the Commission believes it has made no such definitive statement. The Commission believes that such a view of the Commission's statement in the August 31 order results from quoting and viewing Commission statements in that order out of context. With regard to what the Commission will find on the need to include part of Seabrook I in rate base, the decision on that finding will be made after hearing the evidence presented on September 16.

[2] The other two findings that CRR requests that we make relate to the issue "b" set forth in the same Supreme Court order which reads as follows:

Page 427

b. The date upon which the commission first authorized inclusion of such investment in the rate base, and the amounts of the company's investment prior to that date, between that date and the effective date of § 30-a, and thereafter.

One of the findings that CRR requests us to make on this issue relates to the construction work in progress (CWIP) associated with Seabrook I, the notice PSNH investors had of the unlikelihood of including CWIP from Seabrook I in rate base, and the notice PSNH investors had on the likelihood that delays in the operation of Seabrook I combined with the anti-CWIP statute, could cause PSNH's bankruptcy. The support for this finding according to CRR "is contained in various records of the Commission involving PSNH financing proceedings, all of which proceedings have been described in attachment C of the affidavit of Robert Harrison" filed in this proceeding.

These recommended findings may or may not be accurate and may or may not be supported by matters in records at the Commission. The Commission has no objection to being asked to take notice of relevant documents on file with the Commission, but shall expect a party to indicate exactly what records support the requested findings; i.e., a party must make a request to take notice of records with reasonable specificity. Thus, the Commission shall decline to take the requested administrative notice or make findings based on this request of CRR. However, this action is taken without prejudice. CRR may identify relevant records with specificity and ask that we take notice and make relevant findings related to them. Such action must, of course, be taken in a timely fashion.

Similarly, the second finding that CRR requests that the Commission make with regard to issue "b" as designated by the Supreme Court and quoted above involves a finding related to an

alleged sale of part of PSNH's interest in Seabrook Unit I. CRR here also is unspecific with regard to the support to this request for notice, for it states that the support "is contained in various records of the Commission". Again, the Commission declines to search through its records to find documents that may support the allegations that CRR makes. We expect the parties to identify the documents that it asks us to take notice of. Thus, this finding, as well as the request that we take notice, is also denied without prejudice.

Our Order will issue accordingly.

SUPPLEMENTAL ORDER

Based on the foregoing Report Regarding CRR Request for Findings, which is incorporated herein by reference, it is

ORDERED, that the CRR Request for Findings is denied as is further detailed in the foregoing Report.

By order of the Public Utilities Commission of New Hampshire this fifteenth day of September, 1987.

==========

NH.PUC*09/16/87*[60342]*72 NH PUC 428*New England HydroTransmission Corporation

[Go to End of 60342]

72 NH PUC 428

Re New England HydroTransmission Corporation

Additional parties: New England Power Company, Public Service Company of New Hampshire, and UNITIL Power Corporation.

DE 87-124
Order No. 18,833

New Hampshire Public Utilities Commission

September 16, 1987

ORDER clarifying the procedural schedule for hearings on a joint petition regarding the Hydro-Quebec Phase II project.

PROCEDURE, § 13 — Scope of proceeding — Procedural schedule — Hearings on the HydroQuebec Phase II project.

[N.H.] The proposed procedural schedule for hearings on a joint petition regarding the

Hydro-Quebec Phase II project was approved as reasonable.

APPEARANCES: Kirk L. Ramsauer for New England Hydro-Transmission Corporation, New England Power Company, Public Service Company of New Hampshire and UNITIL Power Corporation and Martin C. Rothfelder for the Commission and the Commission Staff.

By the COMMISSION:

Report Regarding Prehearing Conference

On June 25, 1987 a joint petition regarding the Hydro-Quebec Phase II project was filed on behalf of New England HydroTransmission Corporation, New England Power Company, Public Service Company of New Hampshire and UNITIL Power Corporation; hereinafter referred to as "the applicants". The petition asked for approval of various matters as enumerated in the Order of Notice issued by the Commission on August 18, 1987. The August 18, 1987 Order of Notice set a prehearing conference on this matter for September 8, 1987. On September 3, 1987 the Consumer Advocate filed a notice of intervention stating that pursuant to RSA 363:28, the office of Consumer Advocate intervenes in this proceeding on behalf of residential utility consumers.

On September 8, 1987 the Commission held the scheduled prehearing conference in this matter. At that prehearing conference, representatives of the applicants and the Commission Staff appeared. The participants in that prehearing conference recommended the following procedural schedule to the Commission:

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

September 28, 1987 Staff Data Requests on Applicants Due

October 13, 1987 Applicants' Responses to Staff Data Requests Due

October 29, 1987 Staff Testimony Due

November 5, 1987 Hearing.

The parties to the prehearing conference further agreed that should there be a need for discovery on any Staff testimony that is filed, the Staff would make reasonable efforts to expeditiously answer such discovery prior to the November 5 hearing. However, if there was extensive discovery on Staff, the parties indicated that there would probably be a need to move the hearing back to a later date in November.

The Commission finds the above procedural schedule reasonable. However, the Commission finds it necessary to add two details which the parties perhaps assumed anyway. First, the November 5, 1987 hearing will begin at 10:00 a.m. and it will be held at the Commission's hearing rooms in Concord, New Hampshire. Second, should the Consumer Advocate desire to submit data requests or file testimony, the dates for its data requests or testimony shall be identical with those of the Staff.

Our Order will issue accordingly.

ORDER

Upon consideration of the foregoing Report Regarding Prehearing Conference, which is incorporated herein by reference, it is

ORDERED, that these proceedings shall be governed by the procedural schedule and related matters developed in the foregoing Report.

By order of the Public Utilities Commission of New Hampshire this sixteenth day of September, 1987.

==========

NH.PUC*09/16/87*[60344]*72 NH PUC 430*Granite State Telephone, Inc.

[Go to End of 60344]

72 NH PUC 430

Re Granite State Telephone, Inc.

Additional party: New England Telephone and Telegraph Company

DE 86-226
Order No. 18,834

New Hampshire Public Utilities Commission

September 16, 1987

ORDER approving proposed amendments to telephone utility tariffs governing extended local service areas.

RATES, § 573 — Telephone — Extended area service — Tariff revisions.

[N.H.] Telephone utility tariffs amending the extended local service areas of the Chester and Manchester exchanges were approved; the utilities were directed to notify each affected customer of the approved changes by bill insert or other appropriate mailing or publication.

By the COMMISSION:

ORDER

WHEREAS, Commission Order No. 18,635, issued on April 13, 1987, approved the joint plan of the Granite State Telephone, Inc. (GST) and the New England Telephone (NET) which proposed amending the extended local service areas of the Chester and Manchester exchanges such that toll-free calling would result (72 NH PUC 147); and

WHEREAS, technical details have been completed and appropriate tariff revisions filed to effect this change; and

WHEREAS, this Commission finds such in compliance with its earlier order; it is

ORDERED, that the following tariff revisions are approved for effect on September 25, 1987:

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

Granite State Telephone

Tariff No. 6:

Supplement No. 8, Original Page 1
   Section 2, 6th Revised Sheet 2
   Section 5, 3rd Revised Sheet 2
   Section 5, 2nd Revised Sheet 3
   Section 5, 1st Revised Sheet 4, 5,
     7 and 11

New England Telephone

   Tariff No. 75:

   Section 5, 1st Revised Page 14
   Section 5, 6th Revised Page 20.8
   Section 9, 1st Revised Pages 32
     and 59
```

and it is

FURTHER ORDERED, that cited companies notify each affected customer of these approved changes by bill insert or other appropriate mailing or publication;

By order of the Public Utilities Commission of New Hampshire this sixteenth day of September, 1987.

==========

NH.PUC*09/16/87*[60345]*72 NH PUC 431*New England Telephone and Telegraph Company

[Go to End of 60345]

72 NH PUC 431

Re New England Telephone and Telegraph Company

DE 87-159
Order No. 18,835

New Hampshire Public Utilities Commission

September 16, 1987

ORDER nisi authorizing a telephone utility to place and maintain aerial plant over and across a public waterway.

CERTIFICATES, § 123 — Telephone — License to cross public waters — Aerial plant.

[N.H.] A telephone utility was conditionally authorized to place and maintain aerial plant over and across public waters for the purpose of providing additional circuits to an exchange

area where such circuits were needed to meet the utility's obligation to serve its franchise area.

By the COMMISSION:

ORDER

WHEREAS, on August 20, 1987 the New England Telephone & Telegraph Company, Inc. (NET) filed with this Commission its petition seeking license under RSA 371:17 to place and maintain aerial telephone plant over and across the public waters of the Merrimack River between the Towns of Boscawen and Canterbury, New Hampshire; and

WHEREAS, said plant comprises a 200pair cable originating at Pole Tel 27/18 in Boscawen and terminating on the Canterbury side of the river at Pole Tel 27/19; and

WHEREAS, the purpose of such plant is to provide additional circuits for the Company's Penacook exchange, such circuits needed to meet the Company's obligation to serve its franchised area; and

WHEREAS, while such expansion appears to be in the public good, the Commission feels the public must be given the opportunity to respond in support of, or in opposition thereto; it is

ORDERED, that all persons desiring to respond to this water crossing petition be notified that they may submit their comments in writing or file a written request for public hearing no later than October 1, 1987; and it is

FURTHER ORDERED, that such notice be given via one-time publication of a copy of this order in the Concord Monitor, to appear no later than September 25, 1987 and documented by affidavit to be made on a copy of this order and filed with the Commission on or before October 6, 1987; and it is

FURTHER ORDERED NISI, that NET be, and hereby is granted license under RSA 371:17 et seq to place and maintain aerial telephone plant over and across the Merrimack River extending between Pole Tel 27/18 in Boscawen and Pole Tel 27/19 in Canterbury, New Hampshire; and it is

FURTHER ORDERED, that all construction meet the requirements of the National Electrical Safety Code; and it is

FURTHER ORDERED, that said authority shall become effective 20 days from the date of this order unless a hearing is requested as provided herein or the Commission otherwise directs prior to that date.

By order of the Public Utilities Commission of New Hampshire this sixteenth day of September, 1987.

==========

NH.PUC*09/16/87*[60346]*72 NH PUC 432*Pennichuck Water Works, Inc.

[Go to End of 60346]

72 NH PUC 432

Re Pennichuck Water Works, Inc.

DR 87-115
Order No. 18,836

New Hampshire Public Utilities Commission

September 16, 1987

ORDER requiring a water utility to appear and show cause why its petition to engage in business as a public utility in the franchise area of another water utility should not be dismissed.

SERVICE, § 210 — Water — Extension of service into the franchise area of another — Procedure.

[N.H.] A water utility was directed to appear and show cause why its petition to provide service in the franchise area of another water utility should not be dismissed where the petition failed to allege or produce any evidence to show that the later utility had declined requests for service, unreasonably failed to provide service, or provided inadequate service in the franchise area at issue.

By the COMMISSION:

REPORT ON THE MOTION TO DISMISS

I. Procedural Schedule

On June 19, 1987 Pennichuck Water Works, Inc.("Pennichuck") filed a petition to engage in business as a public utility in a limited area in the Town of Amherst. Implicitly, this filing requests that the Commission revoke Southern New Hampshire Water Company, Inc.'s ("Southern") franchise rights that are within the petitioned area, as well as establish rates for the petitioned area.

A prehearing conference was held on July 30, 1987. By Report and Order No. 18,785, issued August 5, 1987 the Commission approved a procedural schedule and granted the interventions of the Town of Amherst and Southern.

II. Positions of the Parties

The subject of this order is a motion to dismiss the petition filed by Southern on August 12, 1987 with the caption ``Docket DE 87-022." We will assume that the Movant intended to make its motion with reference to Docket DE 87-115 instead of Docket DE 87-022 and rule as if the motion contained the Docket Number DE 87-115.

The Movant argues that Pennichuck has requested the Commission grant it operating authority within the Town of Amherst in an area presently enfranchised to Southern. Southern argues that, since the petition requests a withdrawal of authority to provide service, the

Commission may not, pursuant to RSA §374:28 withdraw authority over any of Southern's business territory unless it finds after notice and public hearing that Southern "has declined or unreasonably failed to render service in its territory or that its service in this territory is inadequate, no sufficient reason for inadequacy appearing." RSA §374:28. Southern avers that Pennichuck's petition fails to allege facts that would support these findings. Further, Southern is unable to adequately prepare a case in opposition due to this lack of specific allegations.

In its motion to amend the original petition, Pennichuck averred that the Southern does not have enough capacity to provide service to prospective customers who have requested or will request service. In addition, the Petitioner asserted that Southern has "failed to sufficiently expand its customer base in the franchise and as a result failed to the achieve the economics of scale necessary to provide efficient water service at reasonable rates."

III. Commission Analysis

The petition to provide service requests permission for a service territory for which

Southern already has a franchise. The Petitioner has not alleged or produced any evidence to show that Southern has declined requests for service, unreasonably failed to render service, or given inadequate service in the territory at issue. RSA §374:22.

For the above reason, a hearing will be held on October 15, 1987 at 2:00 PM, at which time the petitioner shall appear and show cause why its petition should not be dismissed.

Our order will issue accordingly.

ORDER

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

ORDERED, that Pennichuck Water Company, Inc. appear before the Commission in a hearing at the offices of the Commission, 8 Old Suncook Road, Building]1, Concord, New Hampshire at 2:00 PM on October 15, 1987 to show cause why its petition to engage in business as a public utility in a limited area in the Town of Amherst should not be dismissed.

By order of the Public Utilities Commission of New Hampshire this sixteenth day of September, 1987.

==========

NH.PUC*09/17/87*[60347]*72 NH PUC 433*New England Telephone and Telegraph Company

[Go to End of 60347]

72 NH PUC 433

Re New England Telephone and Telegraph Company

DR 87-166
Order No. 18,838

New Hampshire Public Utilities Commission

September 17, 1987

ORDER reclassifying local telephone exchanges.

RATES, § 538 — Telephone — Classification of exchanges.

[N.H.] Commission-approved procedures allow for the reclassification of local telephone exchanges should the results of two consecutive annual studies of weighted main telephone exchange lines indicate that an exchange area has exceeded the limits specified in utility tariffs.

By the COMMISSION:

ORDER

WHEREAS, Part A, Section 5, Paragraph 5.1.3 of the New England Telephone (NET) Tariff No. 75 outlines reclassification of local exchanges based upon annual study of weighted main telephone exchange lines; and

WHEREAS, these Commission-approved procedures allow the change of rate grouping, should lower (or upper bounds) be less than (or more than) the limits specified in said tariff in each of two consecutive study periods; and

WHEREAS, the June 30, 1987 study by NET has shown that several of the local exchanges within the NET franchise have exceeded the upper limits of their Rate Group for both the 1986 and 1987 studies; it is

ORDERED, that the following exchanges be reclassified as shown below:

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

Pittsburgh From Rate Group 3 to Rate Group 4
Pike From Rate Group 3 to Rate Group 4
No. Stratford From Rate Group 4 to Rate Group 5
Greenfield From Rate Group 5 to Rate Group 6
Campton From Rate Group 5 to Rate Group 6
Jefferson From Rate Group 6 to Rate Group 7
Bartlett From Rate Group 6 to Rate Group 7
Jackson From Rate Group 6 to Rate Group 7
Milton Mills From Rate Group 6 to Rate Group 7
Rumney From Rate Group 6 to Rate Group 7

Greenville From Rate Group 7 to Rate Group 8
No. Conway From Rate Group 7 to Rate Group 8
Ashland From Rate Group 9 to Rate Group 10
Plymouth From Rate Group 10 to Rate Group 11
Belmont From Rate Group 11 to Rate Group 12
Westmoreland From Rate Group 12 to Rate Group 13
Epping From Rate Group 12 to Rate Group 13
Keene From Rate Group 12 to Rate Group 13
Canterbury From Rate Group 12 to Rate Group 13
Epsom From Rate Group 13 to Rate Group 14
Laconia From Rate Group 13 to Rate Group 14
Newmarket From Rate Group 13 to Rate Group 14
Milford From Rate Group 17 to Rate Group 18

and it is

FURTHER ORDERED, That Part A, Section 5, 11th Revised Page 8, 6th Revised Page 22, 5th Revised Pages 23 through 25, 6th Revised Page 26 and 4th Revised Page 27 of Tariff No. 75 be, and hereby are, approved for effect on September 27, 1987 and it is

FURTHER ORDERED, that public notice of the impact of this approval be given via one-time publication of a summary of the changes in the Union Leader, Manchester NH, as well as in a bill insert provided each affected customer.

By order of the Public Utilities Commission of New Hampshire this seventeenth day of September, 1987.

==========

NH.PUC*09/18/87*[60348]*72 NH PUC 434*Lakeland Management Company, Inc. (Water Utility Division)

[Go to End of 60348]

72 NH PUC 434

Re Lakeland Management Company, Inc. (Water Utility Division)

DE 87-111
Order No. 18,839

Re Lakeland Management Company, Inc.
(Sewage Disposal Division)

DE 87-112
Order No. 18,839

New Hampshire Public Utilities Commission

September 18, 1987

ORDER granting motions to intervene and approving a proposed procedural schedule.

---

1. PARTIES, § 18 — Intervenors — Grounds for granting intervention.

[N.H.] Motions to intervene in a proceeding concerning the establishment of water utility and a sewage disposal utility were granted where (1) the intervening parties would be affected by the rates and services of the utilities, and (2) the interventions would not impair the orderly and prompt conduct of the proceedings. p. 436.

2. PROCEDURE, § 13 — Procedural schedule — Approval by commission.

[N.H.] A proposed procedural schedule was accepted when the commission determined that it would give the parties sufficient opportunity for discovery and case preparation while also allowing the commission to act within a reasonable time frame. p. 436.

APPEARANCES: Dom D'Ambruoso, Esq. of Ransmier & Spellman for Lakeland Management Company, Inc.; Mary Ellen Kiley, Esq. of Gallagher, Callahan and Gartrell for Orchard at Plumber Hill Condominium Association; Edward Fitzgerald and Murray Dean, for Granite Ridge Condominium Association; James Lenihan, Edward Schmidt, Daniel Lanning, Robert

Lessels for the Staff of the Public Utilities Commission.

By the COMMISSION:

REPORT ON THE PREHEARING CONFERENCE ON THE PETITION TO ESTABLISH UTILITIES

I. Procedural History

On June 15, 1987 Lakeland Management Company, Inc. "Lakeland" or "Company") filed a petition to establish a water utility and a sewage disposal utility in a limited area in the Town of Belmont and the City of Laconia, New Hampshire and a petition for temporary rates and, implicitly, to establish permanent rates, therefor, pursuant to RSA §378 et seq. By orders of notice dated, respectively, July 7 and 8, 1987, the Commission scheduled a hearing on the merits of the temporary rate proposal (RSA §378:27) and a prehearing conference on the issues of permanent rates (RSA §378:28) and on authority to operate as water and sewer utilities (RSA §374:26).

II. Prehearing Conference

The prehearing conference was held as scheduled before the Commission's Hearing Examiner. At the prehearing conference the Examiner heard oral argument in support of the petition for intervention of the Orchard at Plumber Hill Condominium Association. It also heard the oral motions to intervene of Edward Fitzgerald and Murray Dean on behalf of the Granite Ridge Condominium Association. Both condominium associations requested intervention on the basis that the petitioner would provide utility service to their condominium associations. The petitioner did not object to either of the motions to intervene.

Next the Examiner heard arguments as to whether the petitioner should be allowed to present evidence concerning temporary rates when the petitioner had not yet had a hearing on the merits of the petition for permission to provide utility service. Lakeland Management Company argued in favor of going forward on the merits since the issue had been duly scheduled by the Commission. The Orchard at Plumber Hill objected to going forward on the merits, because it has serious concerns about the capacity of the wells and the quality of service which need to be addressed in a hearing on the petition to provide service before the level of temporary rates should be litigated. The Granite Ridge Condominium Association supported the argument of the Orchard at Plumber Hill. In light of these objections, Lakeland Management recommended that the hearing be held as a prehearing conference on all of the issues.

After conferring, the parties recommended the following procedural schedule.

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

September 14, 1987 — Staff and Intervenor Data Request to the Company

September 25, 1987 — Company Responses to Data Requests

September 30, 1987 — Hearing on the Merits of Franchise and Temporary Rates

October 1, 1987 — Filing of Permanent Rates

October 9, 1987 — Staff and Intervenor Data Requests to the Company

October 19, 1987 — Company Responses to Data Requests

November 10, 1987 — Hearing of the Merits of Permanent Rates

III. Commission Analysis

[1] There were no objections to the motions to intervene. The interventions would be in the interests of justice as both parties would be affected by the rates and service of the petitioner. Since there are only three intervenors, two of which represent separate associations, it would appear that the interventions would not impair the orderly and prompt conduct of the proceedings under RSA §541-A:17 II. Therefore, both motions to intervene are granted.

[2] The proposed procedural schedule will give the parties sufficient opportunity for discovery and case preparation but will also be expedited enough to allow the commission to take appropriate action within a reasonable time frame. Therefore, the proposed procedural schedule is approved and all decisions on authority, temporary rates, and permanent rates are deferred and shall be considered pursuant to the revised procedural schedule.

Pursuant to RSA §541A:22, the commission served copies of the July 7 and 8 orders of notice on the City of Laconia and the Town of Belmont. Neither municipality intervened in or appeared at the prehearing conference, although Laconia filed a written expression of interest in the docket. To insure that Laconia and Belmont remain informed of their opportunities to be heard in this matter, we will require Lakeland to mail copies of this order by certified mail, return receipt requested, to Belmont and Laconia, within three working days of the date of this Report and Order.

Our order will issue accordingly.

ORDER

Based on the foregoing Report, which is incorporated herein by reference, the Commission

ORDERS, that the motions to intervene of The Orchard at Plumber Hill Condominium Association and the Granite Ridge Condominium Association are granted; and it is

FURTHER ORDERED, that the procedural schedule proposed by the parties is accepted; and it is

FURTHER ORDERED, that all further decisions on authority, temporary rates, and permanent rates are continued, as detailed in the foregoing Report; and it is

FURTHER ORDERED, that the Company shall give such notice to the cities of Belmont and Laconia as is detailed in the foregoing Report.

By order of the Public Utilities Commission of New Hampshire this eighteenth day of September, 1987.

==========

NH.PUC*09/18/87*[60349]*72 NH PUC 436*Manchester Water Works

[Go to End of 60349]

72 NH PUC 436

Re Manchester Water Works

DE 87-144
Order No. 18,840

New Hampshire Public Utilities Commission

September 18, 1987

ORDER nisi authorizing water utility to extend its mains and service.

SERVICE, § 210 — Water — Extensions — Commission authorization.

[N.H.] A water utility was conditionally

authorized to extend service into an area where no other utility had franchise rights; the commission found that the extension appeared to be in the public good.

By the COMMISSION:

ORDER

WHEREAS, Manchester Water Works, a water public utility operating under the jurisdiction of this Commission in areas served outside the city of Manchester, by a petition filed July 27, 1987, 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, after investigations and consideration, it appears 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 October 5, 1987; 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 September 28, 1987 and documented 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:

A block area to include all properties with frontage on Auburn Road, from Independence Drive to Old Derry Road; on Woods Road from Auburn Road southerly 2,000' more or less to its present dead end, on the proposed Sheridan, Shelley and Matthew Drives;

and it is

FURTHER ORDERED, that such authority shall be effective twenty days from the date of this Order 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 eighteenth day of September, 1987.

==========

NH.PUC*09/21/87*[60350]*72 NH PUC 437*Northern Utilities, Inc.

[Go to End of 60350]

72 NH PUC 437

Re Northern Utilities, Inc.

DF 87-165
Order No. 18,843

New Hampshire Public Utilities Commission

September 21, 1987

ORDER authorizing a utility holding company to issue, sell and renew securities debt.

SECURITY ISSUES, § 44 — Factors affecting authorization — Sale of short-term notes — Utility holding company.

[N.H.] A utility holding company was authorized to issue and sell for cash short-term notes

and notes payable in an aggregate amount not to exceed $10 million where (1) the cash was needed to finance seasonal fuel purchases, customer accounts receivable, and other on-going working capital needs, and (2) such authorization was found to be in the public good.

Page 437

By the COMMISSION:

ORDER

WHEREAS, Northern Utilities, Inc. a New Hampshire Corporation having its principal place of business in Portsmouth, Rockingham County, having filed, on August 28, 1987, a petition for authority pursuant to R.S.A. 369:1 and 4 to increase short-term notes not to exceed $10,000,000; and

WHEREAS, Northern Utilities, Inc. estimates capital expenditures totalling $6,435,000 for its 1988 fiscal year commencing October 1, 1987; and

WHEREAS, Northern Utilities, Inc. also states that their total outstanding short-term notes payable was $1,600,000 on July 31, 1987 and further states that none of this amount pertains to short-term indebtedness of Granite State Gas Transmission, Inc., the Company's wholly-owned subsidiary; and

WHEREAS, Northern Utilities, Inc. will be entering the heating season which necessitates the financing of seasonal fuel purchases and customer accounts receivables, as well as other on-going working capital needs; and

WHEREAS, Northern Utilities, Inc., was authorized to issue short-term notes in an aggregate principal amount not to exceed $14,000,000, by Order No. 18,588 issued February 3, 1987 by the New Hampshire Public Utilities Commission; and

WHEREAS, such authority expired March 31, 1987 at which time the Company reverted to the limitation described in the Commission's Supplemental Order No. 7,446 which establishes the aggregate shortterm indebtedness in an amount not to exceed ten percent of its net fixed capital account; and

WHEREAS, the New Hampshire Public Utilities Commission believes that it would be in the public good to grant said request; it is

ORDERED, that Northern Utilities, Inc. is hereby authorized to issue and sell for cash its notes and notes payable in an aggregate amount not to exceed $10,000,000 to be effective September 15, 1987 and to terminate August 31, 1988; and it is

FURTHER ORDERED, that Northern Utilities, Inc. shall, in the future, 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 January first and July first of each year Northern Utilities, Inc. shall file with this Commission a detailed statement, duly sworn to by its Treasurer, showing the disposition of the proceeds of such Notes until the whole of such proceeds shall have been

fully accounted for; and it is

FURTHER ORDERED, that this Order shall be effective 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 twenty-first day of September, 1987.

==========

NH.PUC*09/21/87*[60351]*72 NH PUC 438*State Line Plaza Water Company

[Go to End of 60351]

72 NH PUC 438

Re State Line Plaza Water Company

DE 86-307
Order No. 18,844

New Hampshire Public Utilities Commission

September 21, 1987

ORDER granting a petition to establish a water utility and approving rates for services.

---

1. RATES, § 595 — Water — Revenue requirement and rate design.

[N.H.] The revenue requirement and rate design for a water company were determined based

Page 438

on the commission's analysis of the operating expenses and rate base of the company. p. 440.

2. CERTIFICATES, § 125 — Water — Authority to act as a public utility.

[N.H.] Approval of a petition for authority to establish a water public utility for the purpose of providing service to a shopping plaza was conditioned upon the petitioner forming a corporation organized under the laws of the State of New Hampshire, as required by RSA 374:24, and upon confirmation that the town to be served had no objection. p. 440.

APPEARANCES: Joseph S. Pappalardo on behalf of State Line Plaza Water Company; John D. Mahoney on behalf on Ames Department Store.

By the COMMISSION:**(113)

REPORT

I. PROCEDURAL HISTORY

On March 25, 1987, J. P. Realty of Methuen, Mass. filed a petition to supply water service to a limited area in the Town of Plaistow, N.H.

A duly noticed hearing was held on June 10, 1987.

II. PETITION

By this petition, J. P. Realty seeks authority pursuant to RSA 374:22 and 26 to establish a water public utility which would provide service to ten commercial establishments in the State Line Plaza in Plaistow, New Hampshire. The water source comes from the municipal system owned by the City of Haverhill, Massachusetts. Haverhill sells water service to J. P. Realty and three other customers in Plaistow who do not, as does J. P. Realty, re-sell the service to others. Water for general service is supplied through a master meter located in the Family Mutual Bank in Haverhill, Mass.

Unmetered water for internal sprinklers is also supplied to the buildings within the plaza. The water system here considered, State Line Plaza Water Company (State Line), is not now a corporation organized under the laws of the State of New Hampshire as required by RSA 374:24.

III. ANALYSIS OF OPERATING EXPENSES

In addition to the cost of purchasing water from Haverhill, the following operating expenses were filed on Exhibit 7:

Administrative & General $ 266 Taxes & Property 637 Depreciation 250 Repairs & Replacements 2017

Administrative & General as shown on Ex. 6 for both water and sewer operations, is shown as $382. In our opinion this expense should be divided equally between both operations.

Property tax expense is derived from the estimated plant value of $10,000 (T.59) plus the replacement cost of meters, during 1986, of $2017. The 1986 tax rate for Plaistow was $63.71 per $1000 valuation.

Depreciation at $250 is derived from a composite rate of 2.5%. In recent small water company proceedings we have allowed a rate of 3.6% which results in an expense of $12,017 x 3.6 = $433. Repairs and Maintenance at $2017 appear to be taken from Ex. 5 for the cost of replacing six water meters in the Plaza at $898 and replacing main water meter at $1119. These represent capital expenses to be recovered through depreciation. On recent small water companies we have allowed an amount of $500 for annual repairs and maintenance. The plant for this system is all within a small area such that repairs should not exceed $250.

The operating expenses then equal:

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

Purchased Water*	$ 4079
Administrative & General	191
Taxes & Property	765
Depreciation	433
Repairs & Maintenance	250
	$ 5718

---

*Extrapolated from companies March 20, 1987 filing.

IV. RATE BASE

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

Plant in Service
($10000 + $2017 1986 repairs) $12,017
Less Depreciation
($10,000 x 3.6% x 6 yrs. (Tr.59) 2,160
$ 9,857

Plus

Working Capital
(O&M less depreciation x 2.5) mos.) 1,101
Total Rate Base $10,958
Rate of Return 10%
Return Requirement $ 1,096
O & M 5,718

Total Cost of Service $ 6,814

V. ANALYSIS OF RATES

[1] The water rate charged to State Line by the City of Haverhill is now set at $1.15 per 100 cubic feet of consumption. In the past, State Line has discounted the rate billed to its customers at various times

... based on usage and peoples problems ... (T.74).

The billing to Ames Department Store was changed from a bill based on metered consumption to one based on the square feet occupied by the store relative to total area in the plaza. (T.19).

The petitioner (T.63) wishes to recover operating expenses and is proposing that consumption be billed at the Haverhill rate of $1.15.

It is our opinion that the rate to be charged each customer shall be made up of a minimum or customer charge developed from operating expenses minus the cost of purchased water or $1639 and a consumption charge of $1.15 per 100 cubic feet:

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

Minimum/Customer Charge
($2735 °10) $274 per
Customer or
$68/Qtr.
All Consumption $ 1.15/100 cu. ft.

All customers shall be billed strictly in accordance with the schedule here developed with no individual discounts granted.

VI. COMMISSION ANALYSIS

[2] The water source for this utility is from a foreign corporation and is possibly in violation of RSA 374:24 which is a matter to be investigated in another docket.

This water system, serving 10 customers, does not fall under the definition of a public water

system as defined by RSA 148:B:1 so no approval is necessary under RSA 374:22 from the Water Supply and Pollution Control Commission. Similarly no registration with the Water Resources Division should be necessary as the use of 20,000 gallons per day will not be reached.

We will approve the authority here sought for a franchise to operate as a public utility in a limited area in the Town of Plaistow as it appears to be in the public good. However, this authority and the authority to charge rates as here developed, shall not be effective until a New Hampshire corporation is formed by State Line pursuant to RSA 374:24, and confirmation from the Town of Plaistow that it has no objection to State Line operating as a public water utility in the area sought.

Our order will issue accordingly.

ORDER

Page 440

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

ORDERED, that State Line Plaza Water Company be, and hereby is, authorized to conduct operations as a water utility in a limited area of the Town of Plaistow, N.H. described in the foregoing Report; and it is

FURTHER ORDERED, that State Line Plaza Water Company shall be allowed to collect gross annual revenues of $6814 by utilizing the following rate structure: $274 per customer per year ($68 quarterly) and $1.15 per hundred cubic feet of consumption; and it is

FURTHER ORDERED, that State Line Plaza Water Company shall file a tariff reflecting the approved rates which shall be effective for all service rendered on or after October l, 1987.

By order of the Public Utilities Commission of New Hampshire this twenty-first day of September, 1987.

FOOTNOTES

**Commissioner Bisson did not participate.

==========

NH.PUC*09/21/87*[60352]*72 NH PUC 441*Granite State Gas Transmission, Inc.

[Go to End of 60352]

72 NH PUC 441

Re Granite State Gas Transmission, Inc.

DF 87-153
Order No. 18,845

New Hampshire Public Utilities Commission

September 21, 1987

ORDER authorizing a gas transmission utility to enter a revolving credit and term loan agreement.

SECURITY ISSUES, § 111 — Financing methods — Revolving credit and term loan agreement — Pipeline project — Gas transmission utility.

[N.H.] A gas transmission utility was authorized to enter a revolving credit and term loan agreement for the purpose of providing funds necessary to complete a pipeline project that would allegedly provide it with a source of low cost natural gas.

By the COMMISSION:

ORDER

WHEREAS, Granite State Gas Transmission, Inc. ("Granite") is a gas transmission utility organized and existing under the laws of the State of New Hampshire; and

WHEREAS, Granite, on August 6, 1987, filed an application for authority, pursuant to R.S.A. 369:1, 4 and 7, to enter into a Revolving Credit and Term Loan Agreement ("Agreement") to provide Granite with a short-term revolving line of credit in an amount not to exceed $7,000,000 and the right to convert up to $4,000,000 of such revolving credit to a 10-year term note; and

WHEREAS, Granite states that the purpose of the financing is to provide Granite with the funds necessary to complete the Portland Gas Pipeline Project ("the Project"); and

WHEREAS, the Project involves a plan by Granite to lease from Portland Pipe Line Corporation ("PPL") an existing 18-inch crude oil pipeline that extends 166 miles from Portland, Maine to a point on the United States/Canadian border at North Troy, Vermont and Highwater, Quebec and to convert the pipeline to gas service; and

WHEREAS, Granite intends to import 25,000 MMBtu/d of natural gas on a firm basis and an additional 15,000 MMBtu/d of natural gas on an interruptible basis to be sold to Granite's parent company, Northern Utilities, Inc. ("Northern") and to Northern's parent company, Bay State Gas Company ("Bay State"); and

WHEREAS, in furtherance of the Project, Granite and PPL entered into, on October 14, 1986, an Agreement to Lease the 18-inch line to Granite for a lease term

beginning on or before November 1, 1988; and

WHEREAS, Granite has received authorization from the Federal Energy Regulatory Commission for the Project; and

WHEREAS, Granite states that the Project will provide Granite, Northern and Bay State with

a second source of low cost pipeline natural gas which will flow from the north, a direct link to Canadian supplies and the ability to reduce high cost supplemental gas supplies; and

WHEREAS, Granite states that the Agreement will be with the First National Bank of Boston and will provide up to $7,000,000 of revolving credit funds for nine months and that the Agreement provides for the revolving credit balance to be converted to permanent financing in the form of a tenyear term loan up to a maximum of $4,000,000 and that the remainder of the permanent financing will be accomplished through an equity contribution of up to $3,000,000 from Northern; and

WHEREAS, the New Hampshire Public Utilities Commission believes that it is consistent with the public good to approve Granite's application; it is

ORDERED, that Granite State Transmission, Inc., is hereby authorized, pursuant to R.S.A. 369:1, 4 and 7 to enter into the Agreement which provides for short-term revolving credit loans in an amount up to $7,000,000 and the subsequent conversion to a ten-year loan of up to $4,000,000 of the revolving credit balance, the proceeds of which will be used to finance the Portland Pipeline Project; and it is

FURTHER ORDERED, that Granite State Transmission, Inc., shall provide notice and receive approval from this Commission of the interest rate option which it elects under the ten-year term note; and it is

FURTHER ORDERED, that Granite within 10 days of the closing will submit a copy of the Executive Revolving Credit and Term Loan Agreement as well as a statement as to the interest rate on the borrowing; and it is

FURTHER ORDERED, that at the time of the conversion of the Revolving Credit Agreement to the Term Loan, Granite will submit copies of all Executive Agreements relating to the term loan as well as a statement as to the interest rate on the term loan; and it is

FURTHER ORDERED, that Granite is authorized to do all things, take all steps and deliver and execute all documents necessary or desirable to implement and carry out the terms of the Agreement; and it is

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

By order of the Public Utilities Commission of New Hampshire this twenty-first day of September, 1987.

==========

NH.PUC*09/22/87*[60353]*72 NH PUC 442*Concord Electric Company

[Go to End of 60353]

Re Concord Electric Company

DE 87-162
Order No. 18,846

New Hampshire Public Utilities Commission

September 22, 1987

ORDER nisi granting a waiver of commission rules to allow an electric utility to continue a winter period electric service protection program designed to protect residential customers from termination.

---

1. RULES AND REGULATIONS — Grounds for waiver — Commission discretion.

[N.H.] The commission may waive the application of any commission rule where good cause appears and justice so requires. p. 443.

2. PAYMENT, § 33 — Termination of electric

Page 442

service — Winter period service protection program — Waiver of commission rules.

[N.H.] A waiver of commission rules was granted to allow an electric utility to continue a winter period electric service protection program; continuation of the program was subject to conditions set forth in a prior order. p. 443.

By the COMMISSION:

ORDER

WHEREAS, on September 2, 1986, the Commission issued Order No. 18,389 in Docket DE 86-228 (71 NH PUC 526) which granted Concord Electric Company (Company) a one year waiver, until December 1, 1987, 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) for the purpose of implementing an Electric Service Protection (ESP) Program; and

WHEREAS, the ESP Program was identical in all material respects to that of its sister company under the common ownership of UNITIL Corporation, Exeter and Hampton Electric Company, initially approved by the Commission and implemented in the winter of 1983-1984 (Report and Order No. 16,751, DE 83-297 [68 NH PUC 660]) and extended on a yearly basis thereafter (1984-1985: Order No. 17,248, DE 84-243 [69 NH PUC 603], 1985-1986: Order No. 17,898, DE 85-322 [70 NH PUC 844], and 1986-1987: Order No. 18,390, DE 86-210 [71 NH PUC 528]); and

WHEREAS, the Company was directed in Order No. 18,389 to prepare and file an evaluation of the 1986-1987 ESP Program and submit it to the Commission no later than August 1, 1987;

and

WHEREAS, on August 24, 1987, the Company filed a petition to extend the above mentioned waiver through the December 1987 to December 1988 period to allow the Company to continue its ESP Program; and

WHEREAS, on August 24, 1987, the Company submitted an evaluation of the ESP Program for the period December 1986 to December 1987; and

WHEREAS, after a complete review of the Company's August 24, 1987 filing, the Commission finds that the Company's efforts were constructive and continuation of the ESP Program is in the public interest; 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 mentioned 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 1987 to December 1988 period subject to the con- ditions 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 stated rules to Exeter and Hampton Electric Company 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 303.08 (K) (2), (3) and (6) to Concord Electric Company be, and hereby is, waived for the 1987-1988 winter period; and it is

FURTHER ORDERED, that the Company shall prepare an evaluation of the 1987-1988 ESP Program and submit it to the Commission no later than August 1, 1988; and it is

FURTHER ORDERED, that the Company shall notify all persons desiring to be in this matter by causing an attested copy of the 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 twenty-second day of September, 1987.

==========

NH.PUC*09/23/87*[60354]*72 NH PUC 444*New England Telephone and Telegraph Company

[Go to End of 60354]

72 NH PUC 444

Re New England Telephone and Telegraph Company

DF 86-61
Supplemental Order No. 18,847

New Hampshire Public Utilities Commission

September 23, 1987

ORDER updating authority of local exchange telephone carrier to issue debt securities at appropriate interest rates

---

SECURITY ISSUES, § 44 — Factors affecting authorization — Changes in financial market and capital needs.

[N.H.] A local exchange telephone carrier, previously authorized to issue and sell debt securities at appropriate interest rates not exceeding 9%, was permitted to update the prior approval because financial markets and the utility's capital needs had changed, provided that the interest rates did not exceed 11%, the carrier's debt ratio immediately after issuance did not exceed 45%, and the proceeds of the sale were used for (1) repayment of short-term debt; (2) refunding of maturing long-term debt; (3) refinancing of outstanding higher coupon debt or improvements, extensions or additions to utility plant; or (4) for other general corporation purposes.

By the COMMISSION:

SUPPLEMENTAL ORDER

WHEREAS, our Order No. 18,130, dated February 26, 1986 (71 NH PUC 137), au- thorized New England Telephone and Telegraph Company (the "Company") to, among other things, issue and sell additional debt securities in the aggregate principal amount of Two Hundred Million Dollars ($200,000,000) during the two year term of the Company's shelf registration, insofar as such issue pertains to property or expenditures in the State of New Hampshire; and

WHEREAS, our Order No. 18,214, dated April 9, 1987 (71 NH PUC 237), author- ized the Company to issue and sell such securities at appropriate interest rates not exceeding 9%, the proceeds of which to be used to refinance high price issues; and

WHEREAS, the Company, by letter dated September 23, 1987, has requested this Commission to update the approval effected by the foregoing orders, provided the interest rates to not exceed 11%, the debt ratio immediately after issuance of the securities does not exceed 45% and the proceeds of such sales are used for one or more of the following purposes: repayment of short term debt, refunding of maturing long term debt, refinancing of outstanding higher coupon debt or improvements, extensions or additions to the Company's plant, or for other general corporation purposes; and

WHEREAS, the financial markets and the Company's capital needs have changed since the foregoing orders were issued, and the Company wishes to be in a position to

capitalize on interest rate windows of opportunity; 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 11%; provided that the Company's debt ratio immediately after issuance of the securities shall not exceed 45% and the proceeds of such sales are used for one or more of the following purposes: repayment of short term debt, refunding of maturing long term debt, refinancing of outstanding higher coupon debt or improvements, extensions or additions to the Company's plant, or for other general corporate purposes;

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 Twenty-third day of September, 1987.

==========

NH.PUC*09/24/87*[60355]*72 NH PUC 445*Portsmouth Cellular Limited Partnership

[Go to End of 60355]

72 NH PUC 445

Re Portsmouth Cellular Limited Partnership

DE 87-126
Order No. 18,848

Re JHP Partnership

DE 87-136
Order No. 18,848

Re Starcellular

DE 87-137
Order No. 18,848

Re Manchester NECMA Limited Partnership

DE 87-154
Order No. 18,848

New Hampshire Public Utilities Commission

September 24, 1987

ORDER asserting state commission jurisdiction over the regulation of cellular mobile radio telephone service.

---

1. SERVICE, § 107.1 — Jurisdiction and powers of state commission — Telephone — Mobile service — Pre-emption.

[N.H.] Regulation of cellular mobile radio telephone service by the Federal Communications Commission did not pre-empt regulation by the state commission with respect to state certification, except for considerations of need for service, technical standards, and market structure; the state commission and the FCC had concurrent authority to consider legal, financial, and other qualifications to render service (except technicalability), and to determine whether the public interest and convenience would be served by a grant of authority. p. 451.

2. SERVICE, § 107.1 — Jurisdiction and powers of state commission — Telephone — Mobile service — Grounds for asserting authority.

[N.H.] The commission was authorized and obligated to regulate cellular mobile radio telephone service, because competition was not established in the relevant market, and because cellular telephone service fell within the intent and the specific meaning of the definition of public utility under N.H. Rev. Stat. Ann. § 362:2, based on findings that (1) the cellular system and the public switched network were interconnected; (2) cellular calls had the same characteristics as telephone calls; (3) under a federal rule limiting entry to two underlying carriers, the cellular system was a franchised duopoly; and (4) regulation was necessary because the Federal Communications Commission had left jurisdiction over parts of the business to the states. p. 452.

3. SERVICE, § 68 — Jurisdiction and powers of state commission — Resale — Mobile telephone service.

[N.H.] Although underlying carriers providing cellular mobile radio telephone service were subject to regulation, the commission refrained from regulating the sale of cellular services because underlying carriers and resellers were not similarly situated; resellers had no investment in equipment and no control over access to or prices for the underlying service, but were

essentially

billing agents that did not seem to provide any utility service. p. 454.

---

i. SERVICE, § 107.1 — Jurisdiction and powers of state commission — Telephone — Mobile service.

[N.H.] Statement, by the commission, that with respect to state commission jurisdiction over the regulation of cellular services, the Federal Communications Commission (FCC) had specifically outlined the areas over which the state maintained authority; the states had jurisdiction over intrastate charges, as separated by the FCC for: (1) cellular interconnection charges, and (2) the charges, classifications, practices, services, facilities, or regulations for the switching of interconnected calls. p. 452.

By the COMMISSION:

REPORT ON DE 87-126, PHASE I — COMMISSION JURISDICTION OVER CELLULAR TELEPHONE SERVICE

I. Procedural History

On June 29, 1987, the Portsmouth Cellular Limited Partnership ("Portsmouth") applied pursuant to N.H. Rev. Stat. Ann. §374:22 (1984) for permission to commence business as a public utility, or in the alternative, for exemption from regulation by the Public Utilities Commission ("Commission or P.U.C."). The Commission issued an Order of Notice on July 8, 1987 opening Docket DE 87-126 for the investigation of the application, or for a determination that the petitioner is exempt from regulation by the Commission. The Order of Notice stated that a prehearing conference would be held on August 11, 1987 to consider a bifurcation of the proceeding as follows: Phase I — a generic proceeding to consider whether the Commission has authority to regulate cellular service, and Phase II — a specific proceeding to consider whether the engaging in business or exercise of right, privilege, or franchise of Portsmouth Cellular Limited Partnership to construct and operate a cellular mobile telephone system in the state of New Hampshire is in the public good pursuant to N.H. Rev. Stat. Ann. §374:26 (1984). On July 3, 1987, Starcellular applied pursuant to said statute for permission to commence business as a public utility. On July 15, 1987, JHP Partnership ("JHP") also applied for permission to commence business as a public utility. The Manchester NECMA Limited Partnership ("Manchester") applied on August 13, 1987 for permission to com- mence business as a public utility. All of the petitions were to provide cellular telephone service.

Pursuant: to Order No. 18,778 in Docket DE 87-137 and Order No. 18,777 in Docket DE 87-136 (72 NH PUC 339) Starcellular and JHP Partnership were required to be mandatory parties in Phase I of Re Portsmouth Cellular Limited Partnership, Docket DE 87-126. At the prehearing conference on August 11, 1987 Nynex Mobile Communi- cations Company ("NYNEX") and Manchester NECMA Limited Partnership were granted motions to intervene.

Oral motions pro hac vice were also made by Alan Bouffard, Harold Carroll, David Fazzone, Rita Campanile, and Edward Hall. The Commission granted the motions from the bench under N.H. Admin. Puc §201.3.

By Report and Order No. 18,804 the Commission approved procedural schedules which provided that memoranda of law on the question of the authority of the Public Utilities Commission to regulate cellular telephone activities in New Hampshire should be filed on August 25, 1987 (72 NH PUC 370). The parties agreed at the prehearing conference that the proceedings should be bifurcated and that Phase I should be a generic proceeding which would produce an order applicable to all the parties to determine the issue of Commission jurisdiction. Memoranda of law were timely filed.

II. Positions of the Parties

Portsmouth Cellular, NYNEX, and JHP presented arguments to support the proposition that the Commission does not have the authority to regulate cellular mobile radio telephone service ("cellular service") because the service is not a public utility within the meaning of N.H. Rev. Stat. Ann. §362:2 (1984). Further, these parties aver that assuming arguendo that the Commission does have authority to regulate cellular service, the Commission should forebear from regulation or exercise a simplified form of regulation to enhance competition.

The Staff and Starcellular take the position that the Commission has authority to regulate cellular service. The Staff argues that the Commission also has the obligation to regulate. Starcellular avers that the Commission should modify its regulatory procedures to fit the special circumstances of the cellular industry.

A. Is Cellular Service a Public Utility?

1. Contel Cellular, Inc.

Contel states that to find whether the proposed service will be a "public utility," the Commission must ascertain whether cellular service is included as one of the natural monopolies described under N.H. Rev. Stat. Ann. §362:2, to wit, telephone and telegraph. However, just because it is related to landline telephone service does not make it a public utility. Contel declares that the question to be analyzed is whether cellular service has the "same" type of characteristics that make telephone service a natural monopoly.

One fundamental distinction between cellular and telephone service is that cellular does not require "sets of poles and wires running everywhere." Contel notes that this was a fundamental distinction made by the Supreme Court in Re Omni Communications, 122 N.H. 860, 862, 451 A.2d 1289 (1982) ("Omni") between paging services (an unregulated enterprise) and telephone service (a public utility). It argues that cellular service companies are radio carriers and N.H. Rev. Stat. Ann. §362:2 does not give the Commission authority over radio carriers.

Contel notes that the legislature declined to pass a bill that would subject radio-paging and mobile telephone services to Commission regulation. Since cellular systems are simply high capacity mobile telephone systems, the legislature would not have required regulation of cellular phone.

Contel contends that the structure of the cellular service market makes it exempt from Commission jurisdiction. The Commission determined in Re Motorola Cellular Service, Inc., Docket No. DE 85-395, Report and Order No. 18,216, 71 NH PUC 240 (Apr. 14, 1986) ("Motorola") that resale of cellular service was not a natural monopoly and that the Commission would forebear from regulating it. Further, wholesale providers of cellular service to resellers are not public utilities because they do not provide service to the public.

The "underlying carrier" can also provide cellular service directly to the public. Contel avers that since the Commission declined to exercise jurisdiction over resale that "obviously" the Commission cannot regulate retail service by the underlying carrier when the "same service" offered by resellers is unregulated. In addition, resale will promote competition for the underlying service.

2. Nynex Mobile Communications

Nynex maintains that under the decision in Omni the Commission may only regulate "natural monopolies" which are countenanced because "technical considerations make it more efficient or economical to have a single enterprise" rather than many "competing sets of wires and poles."

Nynex asserts that natural monopolies possess the following characteristics that justify regulation.

a. the production of a good or service that is a necessity;

Page 447

b. the requirement of a physical connection of consumers with suppliers by wires or pipes, which causes the cost of changing suppliers to be substantial;

c. the existence of sharply decreasing perunit costs as output increases, resulting in a market structure where competitive suppliers could not survive, i.e., a natural monopoly; and

d. the franchising of a single supplier for each geographic area, which rules out direct competition.

In analyzing these characteristics, Nynex declares that cellular service is a convenience rather than a necessity, that cellular service does not involve a physical connection, that cellular service does not exhibit declining unit costs, and that cellular service is not a government-created monopoly. Further, it contends that mobile telephone services, private dispatch service, and radio paging services are all cost-effective substitutes for cellular service.

Nynex pointed out all of the jurisdictions that do not regulate or have deregulated cellular carriers. It also asserts that regulation of the wireline carrier is not needed to protect against cross-subsidies from New England Telephone (N.E.T.) because Nynex is a separate subsidiary and the F.C.C. has required that N.E.T. provide nondiscriminatory interconnection to all underlying cellular carriers.

3. JHP Limited Partnership

JHP presented arguments that the F.C.C. has established cellular service as a competitive service and has preempted state certification thereof. JHP argues that the Federal

Communications Commission ("F.C.C.") organized the market into two underlying carriers and an unlimited number of resellers in Re An Inquiry into the Use of Bands 825-845 MHz and 870-890 MHz for Cellular Communications Systems, CC Docket No. 79-318, 86 F.C.C.2d 469, 477, 510, 511, 46 Fed.Reg. 27,655 (1981) ("Cellular Communications I") to promote competition. In this same decision the F.C.C. asserted federal primacy over the areas of technical standards and market structure and preempted the states from making decisions as to the need for the service. Id. at 505. The F.C.C. has asserted federal primacy over entry qualifications, specifically as to technical, financial and legal qualifications. 47 C.F.R. §§22.913, 22.917, 22.921.

JHP asserts that since the F.C.C. has created a competitive market structure the PUC cannot regulate cellular service pursuant to N.H. Rev. Stat. Ann. §362:2 as interpreted in the Omni decision.

4. Portsmouth Cellular Limited Partnership

Portsmouth's argument revolved essentially around the Omni case. It argued that the F.C.C. has created a competitive market for cellular service and that competitive enterprises should not be regulated under N.H. Rev. Stat. Ann. §362:2 as interpreted in the Omni decision.

5. The Staff of the New Hampshire Public Utilities Commission

The Staff maintains that the state has not been preempted by the F.C.C. concerning rates and services, the intrastate portion of cellular interconnection rates and interconnected switching rates, and certification. The Staff notes that the F.C.C. has preempted state jurisdiction over the technical standards for and the market structures of cellular systems. More specifically 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. The Staff also alleges that the F.C.C. has preempted the states from determining need or from "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 service." Cellular Communications Systems I and

Re An Inquiry Into the Use of the Bands 825-845 MHz and 870-890 MHz for Cellular Communications Systems; an 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, 95 (1985) ("Cellular Communications Systems II"). The F.C.C. also has plenary jurisdiction over the physical plant used to interconnect cellular carriers to the landline telephone network and concomitantly over NXX codes and authority to require that interconnection negotiations be conducted in good faith. Re The Need to Promote Competition and Efficient Use of Spectrum for Radio Common Carrier Services, Report No. CL-379, FCC 87 163 (May 18, 1987).

According to the Staff, the states have jurisdiction over the intrastate portion of cellular interconnection charges and the charges, classifications, practices, services, facilities, or regulations for the switching of interconnected calls. 63 Radio Regulation 2d 7 (1987).

The Staff also avers that the F.C.C. has not preempted all state certification processes. The

F.C.C. has in fact noted that such proceedings will be helpful to the F.C.C.'s objectives in that state action could assure that the most qualified entities receive licenses if the proceedings are finished in time to be reflected in the F.C.C.'s licensing proceeding. Cellular Communication Systems I, 86 F.C.C.2d at 505.

The Staff distinguishes the technology involved in paging systems from that used for cellular service. Paging service simply involves the use of terminal equipment attached to the landline telephone system to deliver a one-way message. Cellular service is a two-way communication provided over a system of cellular sites that are interconnected and controlled by a switching office, just as the landlines are connected by switching offices. These offices interconnect with the landlines. Since the communication is a two-way telephone service (albeit provided over radio waves) and uses a system similar in function to the telephone network, Staff asserts that cellular service is telephone service within the meaning of that term as it is used in N.H. Rev. Stat. Ann. §362:2 (1984).

The Staff addresses the argument that competition exists in the cellular market by stating that only two carriers exist for the underlying service, that this is a duopoly and not competition. It also points to the Commission's analysis Re Coin Operated Telephone Policies, DE 84-174, DE 84-159, and DE 84-152, Report and Order No. 17,486, 70 NH PUC 89 (Mar. 11, 1984). Under this analysis cellular is an actual extension of the telephone line designed for use in normal and comprehensive conveyance of telephone messages as contemplated by N.H. Rev. Stat. Ann. §362:2. The Staff pointed to the F.C.C.'s investigation of Basic Exchange Telephone Radio (Re Basic Exchange Telecommunications Radio Service Notice of Proposed Rulemaking, CC Docket No. 86-495, RM 5442, FCC 86-555 [released Jan. 16, 1987]) to show that state cellular regulation may have important implications on universal basic telephone service in the future.

The Staff indicated that two other jurisdictions with similar statutory language have found jurisdiction over cellular service (Re Williams, 53 PUR3d 244 [Wyo.P.S.C.1964] — because of interconnection with the landline network, through telephone service within the meaning of the statute is provided; Re Carriers Providing Intrastate Interexchange Telecomm. Services, Docket No. 84-085-U, Order No. 2, 62 PUR4th 298

Ark.P.S.C.1984] — the act of switching telephone calls from the landlines to the cellular system constituted transmission or conveyance under the statute). Other jurisdictions have found authority to regulate cellular service because effective w

holesale price competition is unlikely in an entryrestricted, two firm cellular market (Re Washington/Baltimore Cellular Teleph. Co., Order No. 66,913, 76 Md PSC 12, [Md.P.S.C. 1985] at 2.) and because it is a direct communication and does everything landline telephone service will do (Re Capital Mobile Radio Service, Inc., 42 PUR3d 433 [N.Y. P.S.C.1962] and North Carolina ex rel. Utilities Commission v. Two Way Radio Service, 272

N.C. 591, 72 PUR3d 222, 158 S.E.2d 855 [1968]).

6. Starcellular

Starcellular avers that the Federal Government created a duopoly for cellular service;

therefore, the legislative intent to foster competition while regulating monopolies can only be served by regulation under N.H. Rev. Stat. Ann. §362:2. It states that forbearance from regulation would not act to increase entry or competition but rather would permit the unrestricted conduct of business by a governmentally sanctioned, private duopoly franchise.

It asserts that the Commission should not interpret the legislative intent of the existing statute using failed attempts to amend the statute. Starcellular also explores the theoretical economic possibilities created by the duopoly market structures: price-leader price-follower price-setting to create monopoly prices and predatory pricing schemes to drive one of the licensees out of business.

Starcellular states that New Hampshire has not been preempted by the F.C.C. with respect to rates and service. New Hampshire may also pass on the qualifications of applicants. Cellular Communications System II, at ¶¶81-84.

B. Should Cellular Service be Regulated Differently than Other Utility Services?

Many of the parties advocated forbearance from or modified forms of regulation of cellular service. This type of regulation is purportedly enabled by F.C.C.-imposed safeguards and is necessary to support the F.C.C.'s policy of enhancing the competitive provision of service.

Eschewal of regulation is argued by Contel, since the F.C.C. has created of a resale market that will enhance competition. In addition, licensees are subject to license renewal challenge on public interest grounds and frequency blocks may be reallocated for nonuse. Cellular Communications System I, 86 F.C.C.2d at 491.

Contel argues that cost-based ratemaking would frustrate competition and be inappropriate in a "start-up" industry. In addition, regulation would supposedly give resellers an unfair pricing and marketing flexibility advantage over underlying carriers. Contel, thus favors quality of service regulation and informational rate filings only, if regulation must exist at all.

Nynex argues that tariff publication should not be required as publication would inhibit service and price competition and lead to collusive pricing behavior. Nynex recommends banded rates if tariffs are required and a certification process limited to a determination that the status quo of the applicant's qualifications has not changed materially from those considered by the FCC. It also suggests that no annual reporting be required but, rather, that the Commission conduct continuing surveillance.

Starcellular favors non-discriminating tariffs and service standards, but a simplified form of regulation.

III. Commission Analysis

A. A Description of the Service

Portsmouth has requested certification to construct and operate a cellular mobile telephone system. The F.C.C. has given such systems the title of "underlying carrier" or "system operator." Underlying carriers are responsible for constructing a system of transmission facilities for interconnection with the landline (also known as the public switched network). The underlying carriers contract with, or are subject to a regulated tariff from, the local exchange companies for interconnection and for the switching functions performed by the public switched network.

Customers of cellular service may obtain service from the underlying carrier or from a reseller of cellular service. Using the cellular network, the customer can access other cellular phones within the "NECMA" (New England County Metropolitan Area). Through interconnection with

the public switched network, customers can call cellular phones in other NECMAs and make local or long distance calls to any telephone on the public switched network.

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. Cellular Communications Systems I, 86 F.C.C.2d at 482. 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.

Cellular Communications Systems II, 89 F.C.C.2d at 61.

The F.C.C. will allocate these two licenses to one "wireline" and one "non-wireline" carrier. Cellular Communications Systems I, 86 F.C.C.2d at 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 488. Wireline carriers may apply only in those general areas where they are certified as a landline carrier. Id., 86 F.C.C.2d at 490 n. 56.

B. Commission Jurisdiction

To determine whether the Commission has jurisdiction over cellular service we will use a two-part analysis. First, has the F.C.C. preempted state jurisdiction over the matter? Second, does the Commission have authority under N.H. Rev. Stat. Ann. §§374:22 and 362:2 to give cellular service providers permission and approval to commence or engage in business, begin construction of service facilities, or exercise any right or privilege under any franchise as a public utility?

1. F.C.C. Preemption

[1] According to 47 C.F.R. §22.901 applications for authorization by the F.C.C. for cellular systems will be granted in cases where the applicant shows that it is legally, financially, technically, and otherwise qualified to render the service, where sufficient frequencies are available to render satisfactory service and where the public interest, convenience and necessity would be served by the grant.

The F.C.C. has very carefully and specifically carved out its preemption of cellular services. In Cellular Communications Systems I the F.C.C. preempted state jurisdiction over the technical standards for and market structures of cellular systems. Specifically, the F.C.C. determined that cellular systems require 20 Megahertz ("MHz") per carrier to ensure efficient frequency reuse and that an allocation of 40 MHz of spectrum to cellular service (20 MHz per carrier) could

"adequately meet public demand for cellular service over the immediate term." Id. 86 F.C.C.2d at 482.

Third, the F.C.C. preempted the determination of need and has preempted the state from:

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. Id. 86 F.C.C.2d at 503-505.

The F.C.C. has permitted state certification programs not interfering with the "competitive market structure" to be implemented. Id. and — Fed.Reg. 21,904, n. 1 (May 29, 1986).

We find, therefore, that the Commission has not been preempted with respect to state certification, except for considerations of need for the service, technical standards,

and market structure. We have concurrent authority to consider the legal, financial, and other qualifications (not including technical) to render service and whether the public interest and convenience are served by the grant of authority.

[i] With respect to our jurisdiction over the regulation of cellular services, the F.C.C. has specifically outlined the areas over which the state maintains authority. In Re the Need to Promote Competition and Efficient Use of Spectrum for Radio Common Carrier Services, Report No. CL-379, FCC 87-163 (May 18, 1987) the FCC stated that the states have jurisdiction over intrastate charges, as separated by the F.C.C. for: 1) cellular interconnection charges, and 2) the charges, classifications, practices, services, facilities, or regulations for the switching of interconnected calls. 63 Radio Regulation 2d 7 (1987).

The states also retain jurisdiction "... with respect to intrastate charges, classifications, practices, services, facilities or regulations for service by licensed carriers." Cellular Communications Systems I, 86 F.C.C.2d at 496. The F.C.C. has jurisdiction over the interstate portions of all rates, the "separations procedure" that determines which costs of service are related to interstate service and which costs of service are related to intrastate service. 63 Radio Regulation 2d 7 (1987). The F.C.C. has also exercised plenary jurisdiction over the physical plant used to interconnect cellular carriers to the switched network, authority over NXX codes and jurisdiction to require that interconnection negotiations be conducted in good faith. Re The Need to Promote Competition and Efficient Use of Spectrum for Radio Common Carrier Services, Report No. CL-379, FCC 87-163 (May 18, 1987).

2. The Commission's Authority and Obligation under the New Hampshire Statute

[2] To analyze whether the Commission has the authority to regulate cellular phone we must initially look to the enabling statutes (N.H. Rev. Stat. Ann. §§374:22 and 362:2); the Supreme Court decisions interpreting the statute, particularly the Omni decision; and the N.H. Const. part 2, article 83. Our analysis indicates that we indeed have the authority to regulate cellular service.

Businesses may not begin or carry on business as public utilities or start building plant to be used in such business, or exercise any right or privilege under any franchise without permission and approval of the Commission N.H. Rev. Stat. Ann. §374:22. The expression "public utility" is

defined in N.H. Rev. Stat. Ann. §362:2. The term includes among other things, every corporation and partnership owning, operating, or managing plant or equipment or any part of the same for conveyance of telephone or telegraph messages for the public.

The Supreme Court interpreted the legislative intent of §362:2 in the Omni case. It ruled that the legislature did not intend to place all companies and businesses somehow related to telephone or telegraph under the umbrella of the regulatory power of the Public Utilities Commission. Id. 122 N.H. at 863. The intent of establishing the P.U.C. was to "find a remedy against the evils of monopoly." Id. 122 N.H. at 862. Although the N.H. Const. part 2, article 83, declares our fundamental preference for free enterprise, the Court found that, due to the unique character of telephone service as a "natural" monopoly a government sanctioned monopoly is required. The Commission was created to regulate the monopolistic practices of this industry. The court found that natural monopolies are countenanced " `because technical considerations make it more efficient or economical to have a single enterprise rather than many' competing sets of wires and poles running everywhere." Id. 122 N.H. at 862 quoting M. Friedman, Capitalism and Freedom 128 (1962).

The Court also noted legislators' concerns, (in New England Household Moving & Storage, Inc. v. New Hampshire Pub. Utilities Commission, 117 N.H. 1038, 1041, 381 A.2d

745, 748 [1977]) that regulatory agencies may be

knowingly and unknowingly raising barriers to entrance into business and may be out of step with legislative intent by being protectionist of their trade and limiting competition. Omni at 864.

The Court also found that no need existed for the P.U.C. to regulate paging service since P.U.C. regulation of telephone lines insured that the radio paging industry is not totally unregulated and that the F.C.C. regulates paging.

We find, that cellular services fall within the intent and the specific meaning of the definition of public utility under §362:2. We have determined this because 1) the cellular system and the switched network are interconnected, 2) cellular calls have the same characteristics as telephone calls, 3) the cellular system is a franchised duopoly, and 4) regulation is necessary because the F.C.C. has left jurisdiction over parts of the business to the states.

Cellular service allows a person to make a call in the cellular network or the switched network. Callers from the switched network can also access the cellular network. In other words, the systems are interconnected. If the Commission did not regulate cellular service, the Commission would have to sort out cellular calls from other local and toll intrastate calls when a customer had a complaint about a bill or quality of service to determine if it has jurisdiction. Concerning local and toll intrastate cellular calls, this would leave the customer with the N.H. courts as the only forum for complaints. It would also leave customers in the middle of debates between the local exchange company and the cellular company about whose equipment caused the problem and whom the customer should go to for a redress of the grievance.

Cellular calls have the same characteristics as telephone calls. They are two-way communications. They are "conveyed" (the operative language of the statute) over equipment

with the same functions (transmission, switching, and programming) as the equipment used in the telephone network. Cellular service is not merely station equipment. Arguments that cellular calls are sent over radio waves are irrelevant since the switched network sometimes sends calls using radio waves, not to mention underground, microwave and fiber optic transmissions.

The underlying cellular system is a franchised duopoly. We have not created this franchise, but we must be concerned with it. The spectrum allocated for cellular service will make about 45 channels available in each cell without a major investment for any so-called "cell-splitting" technology. Re Amendment of Parts 2 and 22 of the Commission's Rules Relative to Cellular Communications Systems, Notice of Proposed Rulemaking, Gen. Docket No. 84-1231, RM-4812, FCC 84-576, 50 Fed.Reg. 3,809 (Jan. 16, 1985). Although the F.C.C. noted that in the downtown section of a major city, this might limit capacity, Id., we doubt that any further allocation of spectrum or concomitant further carrier franchising will be necessary due to excessive demand for service in New Hampshire. Therefore, we expect this duopoly structure to exist for the foreseeable future.

It is not uncontested that the market created by the F.C.C. consisting of underlying carriers and resellers will inevitably produce competition for cellular service, as is advocated by most of the petitioners. We are hopeful that the resale of services may in fact make cellular services more competitive. However, this is yet to be seen. The underlying carriers have control over the network. Resellers must "mark up" the underlying carrier's price to make a profit. It would not be feasible for resellers to crosssubsidize their service charges with for example lower equipment rates because service rates are ongoing whereas, unless equipment is rented, equipment is sold at a one-time price. In addition, resellers sometimes do not add any value to the service offered to justify a higher price to the customer. These resellers do not have the name

recognition or standing service record of the wireline carrier. We find that since competition has not been established and because the service falls squarely within the definition of a public utility that we are authorized and obligated to regulate cellular service.

We do not find persuasive arguments that, because cellular service is not characterized by wires and poles, a single franchised carrier, or a physical connection to the customer, this is not a utility under the statute. We also question the assertion that economies of scale do not exist in this industry. These arguments are made irrelevant by the F.C.C.'s rule that limits entry to two underlying carriers as discussed above. We also discount the argument that cellular service is not a "necessity" because 1) with micro electronics it may someday be a means of basic telephone service, 2) reasonable people could differ as to whether they consider any of the utilities listed under §362:2 to be "necessities", and 3) the Supreme Court has not construed our regulutory authority as applicable only to public utilities that are necessities.

We do not accept the argument that mobile telephone services, private dispatch service, and radio paging services are substitutes for cellular service. First, no studies have been produced showing any crosselasticities of demand for these services. Second, these services provide very different types of communications (e.g. paging is oneway, cellular is two-way), at widely differing prices, and are subject to varying availability and customer preference.

Contel has cited two New Hampshire Supreme Court cases (Allied, N.H. Gas Co. v. Tri-State Gas Co., 107 N.H. 306 (1966); and Claremont Gas Light Co. v. Monadnock Mills, 92 N.H. 468, 51 PUR NS 478, 32 A.2d 823 [1943]) as support for its argument that non-electric wholesale service providers are not public utilities because these wholesale operations do not provide service "for the public" within the meaning of §362:2. In fact, in the two cases cited, the Supreme Court found that the defendants were not public utilities because the defendants sold their service to a single buyer. In Claremont the Court held that "[s]ervice to the public without discrimination is one of the distinguishing characteristics of a public utility (Dover & C. R. Co. v. Wentworth, 84 N.H. 258, 260)." The F.C.C. has required underlying carriers to provide service to all resellers who request service on a nondiscriminatory basis. Therefore, we find that underlying carriers provide service to the public pursuant to §362:2.

[3] Although we have decided to regulate the underlying carriers, we will refrain from regulating the sale of cellular services. Underlying carriers and resellers are not similarly situated in that resellers have no investment in equipment and do not have any control over access to or prices for the underlying service. Resellers are essentially billing agents, they really do not seem to provide any utility service.

C. Simplified Regulation

Although we must regulate underlying cellular service, we are hopeful that the F.C.C.'s "safeguards" will lead to a more competitive environment. Therefore, we will take suggestions from the parties at the hearings concerning ways we may keep control but promote competition as much as possible.

The parties have suggested that we eliminate tariff filing and financial reporting requirements. We cannot negate tariff filing requirements. Tariffs are required to be filed by law. N.H. Rev. Stat. Ann. §378:1. Pursuant to N.H. Rev. Stat. Ann. §374:4 the Commission has the duty to keep informed about the utilities. If the companies or the Staff can recommend limited financial reporting requirements which will allow the Commission to comply with our legal obligations, we will consider these at the hearings. We will also consider other proposed simplified filing requirements or ratemaking possibilities at the hearings. We recommend, particularly, that the companies advise us with respect to banded rates. We believe banded rates may be a solution to the

balancing problem created by predatory pricing possibilities, monopoly pricing opportunities, and the need for competitive pricing flexibility.

ORDER

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

ORDERED, that the Commission is authorized to regulate cellular mobile radio telephone service and will affirmatively exercise such authority.

By order of the Public Utilities Commission of New Hampshire this twenty-fourth day of September, 1987.

72 NH PUC 455

Re Exeter and Hampton Electric Company

DE 87-155
Order No. 18,849

New Hampshire Public Utilities Commission

September 24, 1987

ORDER waiving application of electric service termination rules.

---

1. RULES AND REGULATIONS — Grounds for waiver — Commission discretion.

[N.H.] The commission may waive the application of any commission rule where good cause appears and justice so requires. p. 455.

2. PAYMENT, § 33 — Termination of electric service — Winter period service protection program — Waiver of commission rules.

[N.H.] A waiver of commission rules was granted to allow an electric utility to continue a winter period electric service protection program; continuation of the program was subject to conditions set forth in a prior order. p. 455.

By the COMMISSION:

ORDER

[1,2] WHEREAS, on September 2, 1986, the Commission issued Order No. 18,390 in Docket No. DE 86-210 which granted Exeter & Hampton Electric Company (Company) a one year extension, until December 1, 1987, 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 (71 NH PUC 528); and

WHEREAS, in Order No. 18,390, the Commission also ordered the Company to prepare and submit an evaluation of the ESP Program for the period 1986 — 1987; and

WHEREAS, on August 3, 1987, the Company filed a petition to extend the above mentioned waiver through the December 1987 to December 1988 period to allow the Company to continue its ESP Program; and

WHEREAS, on August 3, 1987, the Company submitted an evaluation of the ESP Program for the period December 1986 to December 1987; and

WHEREAS, after a complete review of the Company's August 3, 1987 filing, the Commission finds that the Company's efforts were constructive and continuation of the ESP Program is in the public interest; and

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 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 1987 to December 1988 period subject to the con- ditions set forth in Report and Order No. 17,428 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. Rule Nos. PUC 303.08 (K) (2), (3) and (6) to the Company, be, and hereby is waived until December 1, 1988; and it is

FURTHER ORDERED, that the Company shall prepare an evaluation of the 1987-1988 ESP Program and submit it to the Commission no later than August 1, 1988; and it is

FURTHER ORDERED, that the Company shall notify all persons desiring to be heard in this matter by causing an attested copy of the 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 twenty-fourth day of September, 1987.

==========

NH.PUC*09/25/87*[60357]*72 NH PUC 456*Petition of Consumer Advocate for an Investigation of the Effect of a Heatwave on Electric Ratepayers

[Go to End of 60357]

72 NH PUC 456

Re Petition of Consumer Advocate for an Investigation of the Effect of a Heatwave on Electric Ratepayers

DE 87-176
Order No. 18,851

New Hampshire Public Utilities Commission

September 25, 1987

ORDER denying a petition for emergency hearings to investigate and determine whether or not an emergency existed to ratepayers of an electric utility as a result of a summer heatwave.

ELECTRICITY, § 4 — Generating plants and interconnected systems — Operating practices — Service to customers during a heatwave.

[N.H.] A petition of the consumer advocate requesting emergency hearings to investigate and determine whether or not an emergency existed to ratepayers of an electric utility as a result of a summer heatwave was denied; in support of the denial the commission explained that it had, through its constant contact with the electric utility, satisfied itself that (1) the utility had taken reasonable steps to support both the New England Power pool and utility customers, and (2) at no time during the heatwave had utility customer requirements exceeded the generation, purchase contract, and entitlement capability of the utility.

By the COMMISSION:

On August 20, 1987 the Consumer Advocate filed with this Commission a Petition of Consumer Advocate requesting, pursuant to RSA 363:28 II, that the Commission hold emergency hearings to investigate and determine whether or not an emergency existed to ratepayers as a result of the recent summer heatwave.

We will deny the motion. The answers to the questions that are raised by the Consumer Advocate were known to the

Commission and its Staff prior to the arrival of the petition. Pursuant to RSA 374:4 Duty to Keep Informed, the Staff's of PSNH and the Commission were in frequent and constant contact

during the immediate period preceding the August 17-18, 1987 heatwave. In accordance with instructions which existed at the time, Company personnel advised the Commission's Engineering Staff on August 16, 1987 to warn that protective measures might be necessary to maintain the integrity of New England's electric system. During the period August 17-18 the Staff was briefed at intervals as frequently as fifteen minutes as events occurred which responded to increasing electric demands. The Commission satisfied itself during that period that the Company had taken and was taking reasonable steps to support the New England Power Pool in general and its own New Hampshire customers in particular.

There was no time during the period August 17-18 when Public Service customer requirements exceeded PSNH's own generation purchase contract and entitlements capability. In fact, for every hour during the 48 hour period, PSNH was an energy exporter to the remainder of the NEPOOL system. At all times during the period all major PSNH generating stations were in operation. The Company's maximum load during the period was 1,113 megawatts. The Company's generating capability, including all entitlements and purchase arrangements, during the period was 1,191 megawatts.

We accepted the contention offered by NEPOOL to the press that there were risks that brown-outs or black-outs might occur. We are satisfied that the risks occurred not because PSNH was unable to meet its own customer needs, but rather because as a member of NEPOOL it was committed to NEPOOL to contribute to any deficiencies that occurred in other portions of New England's system. In fact, PSNH could have done no less. By virtue of the transmission network that exists within the New England region there is no opportunity to isolate New Hampshire and its customers from the New England system and thereby avoid its energy from reaching other New England load centers.

The criteria established to meet emergency situations such as occurred on August 17 and 18 are designed for a one day in ten years occurrence. The system worked according to its design. The announcement to the public that rolling black-outs could occur was proper (1) to induce customers to reduce their load and (2) to anticipate the possible break down of a major generating unit. If a major unit went off line there was power available from within the pool's resources or from its inter tie connections.

It should be noted that the Commission's Engineering Department has been monitoring, surveying and analyzing the emergency operations to meet high peaks for years and has kept the Commission informed regarding all changes thereto. In addition, the subject has continuously been discussed at the New England Conference of Utility Regulators and the New England Governors' Conference and Power Planning Commission.

Our review of the records reveal that PSNH set a new summer peak of 1,113 megawatts for the hour ending 1:00 P.M. on August 17th. During that period PSNH met its energy demands and, additionally, exported 78 megawatts to the NEPOOL system. NEPOOL records reveal that PSNH exported 2,461 megawatt hours to NEPOOL on August 17th and 3,268 megawatt hours on August 18th. During that period approximately 32 megawatts of small power production were available to the PSNH network.

PSNH demonstrated appropriate foresight in predicting the events which ultimately occurred during the period. On May 22, 1987 PSNH notified both this Commission and the FERC of the

risk of energy deficiencies during the summer period. Previously, on March 18, 1987 NEPOOL similarly advised the FERC of pending problems. During the weekend of August 15-16, 1987 PSNH demonstrated appropriate responsiveness in preparing for the unusual weather conditions that ensued and, in

Page 457

conjunction with NEPOOL, prepared itself and its system adequately for the conditions.

The Commission is satisfied that PSNH took appropriate measures to serve customers' needs. We commend the Company for its success in meeting those needs, and in putting itself in a position where it was able to provide additional generation to those states with energy deficiencies. Accordingly, the Consumer Advocate's Petition for Investigation is denied.

ORDER

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

ORDERED, that the Consumer Advocate's Petition for Investigation is denied.

By Order of the Public Utilities Commission of New Hampshire this twenty-fifth day of September, 1987.

==========

NH.PUC*09/25/87*[60358]*72 NH PUC 458*Concord Electric Company

[Go to End of 60358]

72 NH PUC 458

Re Concord Electric Company

DF 87-160
Order No. 18,853

New Hampshire Public Utilities Commission

September 25, 1987

ORDER authorizing a utility to issue and sell bonds.

SECURITY ISSUES, § 50.1 — Factors affecting authorization — Improvement of capital structure — Issuance and sale of bonds — Electric utility.

[N.H.] An electric utility was authorized to issue and sell bonds where it was found that the bond sale would be advantageous to both the utility and its ratepayers; specifically, the commission found that the sale would reduce the overall capital costs of the utility and, that withholding authorization would deprive ratepayers of the benefits of a relatively attractive rate and the lowering of utility's embedded cost of debt.

APPEARANCES: Dom S. D'Ambruoso, Esq. of Ransmeier & Spellman and Elias G. Farrah, Esq. of Leboeuf, Lamb, Leiby, and MacRae on behalf of Concord Electric Company and Daniel D. Lanning and Merwin Sands on behalf of the Staff of the New Hampshire Public Utilities Commission.

By the COMMISSION:

REPORT

I. Procedural History

On August 20, 1987 Concord Electric Company ("Company") filed a petition for authority under RSA §369:1 et seq. for authority to issue and sell $3,500,000 (Three Million Five Hundred Thousand Dollars) of First Mortgage Bonds, Series G, 9.85%, maturing 1997. According to the application, the net proceeds of the proposed sale of the bonds are expected to be applied by the company to reduce off short term indebtedness outstanding at the time of said sale, the proceeds of which have been expended in the purchase and construction of property and facilities reasonably requisite for present and future use in the conduct of the company's business, but may be applied in part, to pay for current expenditures made by the company for said purposes, to finance the future purchase and construction of such property and facilities, to redeem First Mortgage Bonds, Series E, 11.30%, the Cumulative Preferred Stock, 12% Series and to defray the costs and expenses of the financing contemplated by this Petition or for other proper corporate purposes. Pursuant to Commission Order of Notice dated August 21, 1987, the Commission held a duly noticed public hearing on September 17, 1987 to receive the Company's testimony and exhibits as

presented by and through Charles J. Kershaw, Jr., the Company's representative and the Treasurer of UNITIL Corporation.

II. Positions of the Parties

A. Concord Electric Company

Concord Electric supported the proposed issue and sale. Mr. Kershaw testified that the Bonds will be sold at par and will be issued under a Sixth Supplemental Indenture Supplementing the Company's Existing Indenture of Mortgage and Deed of Trust. Mr. Kershaw agreed to see that after the closing in this matter, a final executed copy of the Sixth Supplemental Indenture will be filed with the Commission as a late filed exhibit. Mr. Kershaw also presented certified copies of resolutions which were voted by the Company's Directors on April 16, 1987 and September 11, 1987 authorizing the present proceedings and the redemption of the Series E Bonds and agreed to submit as an additional late filed exhibit certified copies of various additional resolutions authorizing all of the details of the financing which will be adopted by the Company's Board of Directors at a special meeting to be held shortly after issuance of this Commission's Report and Order authorizing the financing requested in this Docket.

Mr. Kershaw presented a series of exhibits showing the sources and applications of funds to

be derived from the financing (Exhibit 1), a list of the Company's gross additions to plant since the last financing on June 7, 1984[1(114)] (Exhibit 1-A), estimated expenses of the proposed issuance and sale of the Bonds (Exhibit 2), a balance sheet as of May 31, 1987, proformed to reflect the proposed issuance of the Bonds (Exhibit 3), an income statement for the twelve months ended May 31, 1987, proformed to reflect the proposed issuance of the Bonds (Exhibit 4), and the Company's capital structure as of May 31, 1987, proformed to reflect the proposed issuance of the Bonds (Exhibit 5). Mr. Kershaw also presented a graph which shows the projected level of the Company's notes payable, both including and excluding the effect of the proposed financing and also the level of short-term borrowing authority (Exhibit CJK-1).

Mr. Kershaw testified that although the Company has managed to fund some of its construction requirements through internally generated funds, its growth continues to be quite strong, and short-term borrowings have increased. In addition the Company has the opportunity to reduce its future costs of capital by using the proposed financing to retire its 12% Series of Preferred Stock and Series E 11.30% First Mortgage Bonds. Although these redemptions do involve some cost, the net results. will be beneficial to the Company and its ratepayers. The Company is asking the Commission to allow the costs associated with the redemption of Series E Bonds, and the remaining unamortized debt expense related to this issue to be included as a cost of new financing. The Company believes that this is appropriate because of the benefits to be derived from the replacement of the high coupon and long maturity bonds with lower cost debt.

Mr. Kershaw represented that the Company constantly studies its permanent financing requirements and capital costs and that it regularly consults its investment bankers, Merrill Lynch, regarding these matters. Merrill Lynch recommended that the Company issue the Bonds at this time and that the issue be sold privately to institutional investors because of its small size and the cost of a public offering. The Travelers Insurance Company is the buyer of the Bonds.

Mr. Kershaw represented that the net proceeds of the proposed sale of the Bonds is expected to be applied by the Company (a) to pay off short-term indebtedness outstanding at the time of the sale, the proceeds of which will have been expended in the purchase and construction of property and facilities reasonably requisite for present and future use in the conduct of the Company's business, (b) to pay for current

expenditures made by the Company for said purposes, (c) to finance the future purchase and construction of property and facilities, (d) to redeem and refund the Company's First Mortgage Bonds, Series E, 11.30% and to redeem its Cumulative Preferred Stock, 12% Series, and (e) to defray the costs and expenses of the financing contemplated by this petition or for other lawful and proper corporate purposes.

B. The Staff of the Commission

The Staff supported the issue and sale of the bonds generally. However, the Staff raised the issue through cross-examination that the Company could achieve a lower cost of capital through the retirement of its 8.70% series preferred stock. It was pointed out, through cross-examination, that the after tax cost of the newly issued debt would be 6.66% including floatation costs compared to the 8.70% after tax cost of the existing preferred stock.

The Company argued in response that it wanted to retain these issues of preferred to give it flexibility. It stated that the retention of preferred stock gives it flexibility for the following reasons:

1. It can defer payments on preferred stock if necessary, but not on debt.

2. It can reserve the ability to issue more debt.

3. Its current debt/equity mix is perceived more favorably by the financial community.

4. Preferred might be more difficult to sell later due to the size of the offering required.

The Company further argued that the size of the savings to be realized after paying the premium required to call back the preferred ("call premiums") would be insubstantial. Further, the Company pledged to continue to review refinancing the preferred.

III. Commission Analysis

The proposed issuance and sale of securities is in the public good. Both the Company and the Staff agree that the issuance would be advantageous to the Company and the ratepayers because it would produce a reduction in overall capital costs. The Commission believes that withholding its approval of the proposed financing would deprive the customers of the Company the benefits of the relatively attractive rate and the lowering of the Company's embedded cost of debt.

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 Concord Electric Company for authority to issue and sell $3,500,000 (Three Million Five Hundred Thousand Dollars) of First Mortgage Bonds, Series G, 9.85%, maturing 1997 be, and hereby is, approved.

By order of the Public Utilities Commission of New Hampshire this twenty-fifth day of September, 1987.

FOOTNOTES

[1]Re Concord Electric Co., 69 NH PUC 242 (1984); Docket DF 84-100, Order No. 17,030, May 16, 1984.

==========

NH.PUC*09/25/87*[60359]*72 NH PUC 461*Exeter and Hampton Electric Company

[Go to End of 60359]

72 NH PUC 461

Re Exeter and Hampton Electric Company

DF 87-161
Order No. 18,854

New Hampshire Public Utilities Commission

September 25, 1987

ORDER authorizing an electric utility to issue and sell bonds.

SECURITY ISSUES, § 50.1 — Factors affecting authorization — Improvement of capital structure — Issuance and sale of bonds — Electric utility.

[N.H.] An electric utility was authorized to issue and sell bonds where it was found that the bond sale would be in the public interest; specifically, the commission found that the sale would reduce the embedded cost of debt of the utility, raise the weight of debt in the utility's capital structure, and lower the overall cost of capital of the utility.

APPEARANCES: Dom S. D'Ambruoso, Esq. of Ransmeier & Spellman and Elias G. Farrah, Esq. of Leboeuf, Lamb, Leiby, and MacRae on behalf of Exeter & Hampton Electric Company and Daniel D. Lanning and Merwin Sands on behalf of the Staff of the New Hampshire Public Utilities Commission.

By the COMMISSION:

REPORT

I. Procedural History

On August 20, 1987 Exeter & Hampton Electric Company ("Company") filed a petition for authority pursuant to RSA §369:1 et seq. for authority to issue and sell $3,000,000 (Three Million Dollars) of First Mortgage Bonds, Series I, 9.85%, maturing 1997. According to the application, the net proceeds of the proposed sale of the bonds are expected to be applied by the company to pay off short term indebtedness outstanding at the time of said sale, the proceeds of which will have been expended in the purchase and construction of property and facilities reasonably requisite for present and future use in the conduct of the company's business, but may be applied in part, to pay for current expenditures made by the company for said purposes, to finance the future purchase and construction of such property and facilities and to defray the cost and expenses of the financing and redemptions contemplated by this petition or for other proper corporate purposes. Pursuant to Commission Order of Notice dated August 21, 1987, the Commission held a duly noticed public hearing on September 17, 1987 to receive the Company's testimony and exhibits as presented by and through Charles J. Kershaw, Jr., the Company's representative and the Treasurer of UNITIL Corporation.

II. Positions of the Parties

A. Issue and Sale of Bonds

Exeter and Hampton supported the proposed issue and sale. Mr. Kershaw testified that the Bonds will be sold at par and will be issued under a Eighth Supplemental Indenture Supplementing the Company's Existing Indenture of Mortgage and Deed of Trust. Mr. Kershaw agreed to see that after the closing in this matter, a final executed copy of the Eighth

Supplemental Indenture will be filed with the Commission as a late filed exhibit. Mr. Kershaw also presented certified copies of resolutions adopted by the Company's Directors on April 16, 1987 authorizing the present proceedings and agreed to submit as an additional late filed exhibit certified copies of various additional resolutions authorizing all of the details of the financing which will be adopted by the Company's Board of Directors at a special meeting to be held shortly

after issuance of this Commission's Report and Order authorizing the financing requested in this Docket.

Mr. Kershaw presented a series of exhibits showing the sources and applications of funds to be derived from the financing (Exhibit I), a list of the Company's gross additions to plant since the last financing on December 20, 1977[1(115)] (Exhibit 1-A), estimated expenses of the proposed issuance and sale of the Bonds (Exhibit 2), a balance sheet as of May 31, 1987, proformed to reflect the proposed issuance of the Bonds (Exhibit 3), an income statement for the twelve months ended May 31, 1987, proformed to reflect the proposed issuance of the Bonds (Exhibit 4), and the Company's capital structure as of May 31,1987, proformed to reflect the proposed issuance of the Bonds (Exhibit 5).

Mr. Kershaw also presented a graph that showed the need to complete this financing by late November so that the Company could avoid increased short-term borrowing above the level that has been previously authorized by this Commission (Exhibit CJK-1). While the Company has managed to fund most of its construction requirements with internally generated funds, the Company's short-term borrowing has increased. A summary of the Company's projected 1987 capital budget was also presented in testimony (Exhibit CJK-2).

Mr. Kershaw represented that the Company constantly studies its permanent financing requirements and capital costs and that it regularly consults its investment bankers, Merrill Lynch, regarding these matters. Merrill Lynch recommended that the Company issue the Bonds at this time and that the issue be sold privately to institutional investors because of its small size and the cost of a public offering. The Travelers Insurance Company is the buyer of the Bonds.

Mr. Kershaw represented that the net proceeds of the proposed sale of the Bonds is expected to be applied by the Company (a) to pay off short-term indebtedness outstanding at the time of the sale, the proceeds of which will have been expended in the purchase and construction of property and facilities reasonably requisite for present and future use in the conduct of the Company's business, (b) to pay for current expenditures made by the Company for said purposes, (c) to finance the future purchase and construction of property and facilities, and (d) to defray the costs and expenses of the financing contemplated by this petition or for other lawful and proper corporate purposes. The Staff supported the issue and sale of the bonds generally.

B. Outstanding Preferred Stock

The Staff elicited facts through crossexamination indicating that the proposed disposition of the bond proceeds is consistent with customer interests. The embedded cost of debt as well as the overall cost of capital will fall substantially as a result of the new debt issue.

Staff pointed out, however, that the Company appeared to be foregoing an opportunity to further reduce customer costs by not retiring the existing 8.75% and 8.25% series preferred stock. Staff maintained that those issues carry an after tax cost that is significantly higher than that of the proposed new debt issue and that the retirement of those preferred issues is in the public interest even when the redemption premiums associated with retiring the preferred are recognized as an additional cost.

The Company argued that the 8.75% series and 8.25% series preferred should be retained to enhance financial flexibility, and reduce capital costs. The existing level of preferred stock offers financial flexibility according to the Company because preferred dividends could be foregone but interest payments on debt could not. Furthermore, the Company maintained that the existing preferred equity provided the Company with a borrowing reserve in the form of unencumbered assets the mortgaging of which may be more valuable in the future than at the present time.

The Company also argued that the aforementioned benefits of preferred equity were

Page 462

perceived by the capital markets and that the existing capital structure was perceived as being in the optimal range. Lastly, the Company asserted that if the redemption premium was included, the cost would exceed the benefits of redeeming the preferred.

The Company related that it, with the assistance of its investment bankers, constantly studies its long term financing requirements and costs. The Company also pledged to review the retirement of preferred as economic conditions and debt costs change.

III. Commission Analysis

The Commission determines that the proposed issuance and sale of first mortgage debt is in the public interest. The Company and Commission Staff agree that the proposed debt issuance will reduce the embedded cost of debt, raise the weight of debt in the Company's capital structure and lower the overall cost of capital of the Company.

The Commission believes that withholding its approval of the proposed financing would deprive the customers of the Company the benefits of the relatively attractive rate and the lowering of the Company's embedded cost of debt.

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 Exeter & Hampton Electric Company for authority to issue and sell $3,000,000 (Three Million Dollars) of First Mortgage Bonds, Series I, 9.85%, maturing 1997 be, and hereby is, approved.

By order of the Public Utilities Commission of New Hampshire this twenty-fifth day of September, 1987.

FOOTNOTES

[1]Re Exeter and Hampton Electric Co., 62 NH PUC 332, Docket DF 77-154, Order No. 12,987, (N.H.P.U.C. Dec. 8, 1977).

==========

[Go to End of 60360]

72 NH PUC 463

Re Granite State Telephone, Inc.

DR 86-297
Order No. 18,855

New Hampshire Public Utilities Commission

September 25, 1987

ORDER approving temporary rates filed by a local exchange telephone carrier.

---

1. RATES, § 630 — Temporary rates — Grounds for granting — Local exchange telephone carrier.

[N.H.] Temporary rates filed by a local exchange telephone carrier pursuant to a state statute (RSA 378:27) designed to protect utilities against confiscatory rates and to permit recoupment of any deficiency suffered under a temporary rate order were approved where (1) the carrier alleged that the requested temporary rates were necessary to protect it from confiscatory rates, and (2) it was found that such temporary rates were needed to enable the carrier to yield not less than a reasonable return on the cost of property used and useful in the public service. p. 465.

2. RATES, § 534 — Telephone — Special factors — Increase beyond the means of customers — Special rate offering — Local exchange carrier.

[N.H.] In light of comments indicating that a rate increase contemplated by a local exchange telephone carrier would be beyond the means of certain ratepayers, the carrier was instructed either to propose a service offering at a lower cost than the standard one party telephone service or provide an explanation as to why such a service offering is unnecessary. p. 465.

Page 463

APPEARANCES: Frederick J. Coolbroth, Esq. of Devine, Millimet, Stahl & Branch on behalf of Granite State Telephone, Inc.; Mary C.M. Hain, Esq., Daniel D. Lanning, Robert E. Duggan, Edgar D. Stubbs, Jr. on behalf of the New Hampshire Public Utilities Commission Staff.

By the COMMISSION:

REPORT ON THE HEARING FOR TEMPORARY RATES

I. Procedural History

Granite State Telephone, Inc. ("Granite State" or "Company") filed revised tariff pages on March 16, 1987 for effect April 16, 1987. Such tariff pages incorporated a proposed increase in rates. The Commission suspended the tariff pages by Order No. 18,634 issued April 10, 1987. On September 1, 1987 the Commission issued Report and Order No. 18,806 (72 NH PUC 378). This Report and Order approved a procedural schedule and ordered the Company to submit temporary tariffs on August 28, 1987 for effect on September 25, 1987. A duly noticed hearing was held on September 21, 1987 on the issue of the temporary rates.

II. Public Comments

Representative Richardson D. Benton of Chester, New Hampshire appeared at the temporary rate hearing. He commented that a 124% increase in telephone rates in Chester and Sandown was beyond the means of those in the community. He stated that building "booms" had created an anomaly where those of limited means and those living in $150,000 condominiums lived in the same community and where the building growth for expensive homes had created the need for additional equipment which would be reflected in higher rates to those residents of limited means.

III. Positions of the Parties

Mr. William R. Stafford presented testimony on behalf of the Company in which he stated that the Company has filed a permanent rate increase request seeking an increase in revenues of $657,324 on an annual basis. He testified that pending a final determination of this rate request the Company's local service rates will not allow it to earn a reasonable rate of return on investment and plant used and useful in the provision of service. Granite State avers that its current level of local service rates result in an significant deficiency in earnings on investment. Therefore, it believes that temporary rates will be appropriate pending the resolution of the permanent rate case.

The Staff did not present any testimony in opposition to the proposed temporary rates.

IV. Findings of Fact

For purposes of the temporary rates the Company calculated the revenue deficiency without regard to pro forma adjustments, utilized total company actual test year results and applied a 34% federal income tax rate in accordance with the Tax Reform Act of 1986. The proposed temporary increase was calculated based on a 1986 test year adjusted only to adjust revenues to reflect an error in the revenues recorded for toll settlements.

The adjusted financial results were calculated on the same basis as the revenue requirement calculated in the testimony of Eugene F. Sullivan, Finance Director of the Commission in his testimony in support of the Staff's motion to dismiss. However, the Company also included its investment in the Rural Telephone Bank Stock the rate base calculation.

The proposed temporary rates are designed to produce a revenue increase of $172,917. The Company proposed to implement an increase in non-recurring service charges to make rates correspond more closely to the Company's costs. The increase

in revenue to be derived from the increases in non-recurring items is $39,906. The balance of the revenue increase would be derived from a 26.75% across the board increase in local service rates. Further, the Company proposes to increase all of its local service rates by 26.75% rounded to the nearest 5 (five cents).

IV. Commission Analysis

[1, 2] The Company has filed for temporary rates pursuant to RSA §378:27. Under this law temporary rates were designed to protect utilities against confiscatory rates and to permit recoupment of any deficiency in returns suffered under a temporary order. New Hampshire v. New England Teleph. & Teleg. Co., 103 N.H. 394, 40 PUR3d 525, 173 A.2d 728 (1961). The Company has alleged in its testimony that the requested temporary rates are necessary to protect the Company from confiscatory rates. Since the methodology used to calculate the temporary rates is approximately the same as the methodology used by the Staff and since the rate of return determined thereby is approximately the same we find that such temporary rates are sufficient to yield not less than a reasonable return on the cost of the property used and useful in the public service and, therefore, are necessary to protect Granite State against confiscatory rates.

The Company has requested that such rates be effective as of September 25, 1987. The Commission finds that in light of the above the temporary rates are just and reasonable and should be allowed to go into effect on September 25, 1987.

It has been Commission policy to encourage a service offering at a lower cost than standard one party telephone service, i.e. low measured service or multiple party service. In light of the comments of Rep. Benton we will expect the company to propose such an offering or provide an explanation of why such an offering is unnecessary at this time.

Our order will issue accordingly.

ORDER

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

ORDERED, that the temporary rates filed by Granite State Telephone Company on August 28, 1987 are approved for effect on September 25, 1987; and it is

FURTHER ORDERED, that the Company shall file tariffs in compliance with this order; and it is

FURTHER ORDERED, that the Company shall propose a lower cost service offering such as low measured service, or multiple party service or provide an explanation of why such an offering is unnecessary at this time.

By order of the Public Utilities Commission of New Hampshire this twenty-fifth day of September, 1987.

==========

NH.PUC*09/28/87*[60361]*72 NH PUC 465*Lakeland Management Company, Inc. (Water Division)

[Go to End of 60361]

72 NH PUC 465

Re Lakeland Management Company, Inc. (Water Division)

DE 87-111
Order No. 18,856

Re Lakeland Management Company, Inc.
(Sewer Division)

DE 87-112
Order No. 18,856

New Hampshire Public Utilities Commission

September 28, 1987

ORDER setting a procedural schedule on a petition to establish water and sewer utility service.

PROCEDURE, § 23 — Notice — Effect of insufficient notice — New schedules.

[N.H.] Where proper notice had not been given on a water and sewer utility's proposal for

Page 465

service, a new procedural schedule was set for hearings on the matter.

APPEARANCES: Dom S. D'Ambruoso, Esquire for Lakeland Management Company, Inc.; Mary Ellen Kiley, Esquire for The Orchard at Plummer Hill Condominium Association.

By the COMMISSION:

REPORT

On June 16, 1987 Lakeland Management Company, Inc. (Lakeland) filed petitions to establish a water utility franchise and a sewage disposal utility franchise in limited areas in the Town of Belmont and the City of Laconia, N.H., and petitions to establish temporary rates for both utilities.

On July 8, 1987, an Order of Notice was issued establishing the date of August 27, 1987 for a prehearing conference on the issue of the petitions to establish water and sewer utilities and permanent rates and to hear the merits of the petition on temporary rates.

In its decision in DR 87-84 and Order No. 18,791 the Commission held that it would not rule on a petition for authority to operate as a public utility until the requirements of RSA 541-A:22 ie: notice to municipalities on matters that effect them and the filing of such evidence attesting to the municipalities compliance. The Commission also held that RSA 378:27 authorizes the

provision of temporary rates to a public utility which has obtained operating authority.

Counsel for The Orchard at Plummer Hill Condominium Association (The Orchard) objected to a hearing on the petition to operate as a public utility since it had not been noticed.

Recognizing the objection of The Orchard and that certain requirements of RSA 541-A:22 had not been met, the following procedural schedules were proposed, which the Commission will adopt:

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

DATE    EVENT

September 14, 1987 Data Requests — staff
  and intervenors

September 25, 1987 Data Responses

September 30, 1987 Hearing on franchise
  and temporary rates

October 1, 1987 Permanent Rate filing
  with exhibits

October 9, 1987 Data Requests

October 19, 1987 Data Responses

November 10, 1987 Hearing on permanent
  rates
```

At this hearing Granite Ridge Condominium Association sought intervention in these proceedings. No objections were made. After due consideration the Commission believes that it is in the public good to grant full intervention to Granite Ridge.

Our order will issue accordingly.

ORDER

Based upon the foregoing Report which is made a part hereof; it is hereby

ORDERED, that the procedural schedules proposed by the parties be, and hereby are accepted; and it is

FURTHER ORDERED, that the request of the Granite Ridge Condominium Association to intervene be, and hereby is, approved.

By order of the Public Utilities Commission of New Hampshire this twenty-eighth day of September, 1987.

==========

NH.PUC*09/28/87*[60362]*72 NH PUC 467*UNITIL Service Corporation

[Go to End of 60362]

DE 86-196
Fifth Supplemental Order No. 18,857
New Hampshire Public Utilities Commission
September 28, 1987

APPROVAL of electric rates reflecting power purchases from an affiliate supplier; discussion of the prudence of terminating a supply agreement.

---

1. RATES, § 47 — Conflicting jurisdiction — Federal preemption — Wholesale electric sales.

[N.H.] The state commission was preempted and could not act directly on the reasonableness of a system agreement pertaining to the provision of electric service for resale because the agreement was under the jurisdiction of the Federal Energy Regulatory Commission pursuant to the Federal Power Act, which expresses a clear congressional intent to federally pre-empt the regulation of wholesale sales of electricity in interstate commerce, except for those sales explicitly made subject to regulation by the states. p. 469.

2. RATES, § 47 — Conflicting jurisdiction — Federal preemption — Wholesale power purchases — State commission review.

[N.H.] Despite pre-emption by the Federal Energy Regulatory Commission that precluded direct review of the reasonableness of a system agreement pertaining to the provision of electric service for resale, the commission had jurisdiction and a duty to consider the reasonableness of power purchases by two electric utilities pursuant to terms of the agreement, when determining the reasonableness of their retail electric rates based on such purchases. p. 469.

3. RATES, § 124 — Reasonableness — Source of power supply — Electricity.

[N.H.] The commission approved rates reflecting power purchases by two electric utilities from an affiliate supplier, despite deficiencies in the decisional process surrounding the utilities' termination of a supply agreement with a full requirements service provider, because the choice between the prior source of electric power and the affiliate supplier was in part perceived as a choice between the uncertainty surrounding the date of operation and the rate-making treatment of the previous supplier's relatively high, undiversified investment in and reliance on a single power source (a nuclear generating facility) versus a power supply based on a diverse power mix; a decision upon the latter, along with knowledge of the human resources available to put that power supply together, provided a reasonable basis upon which to act during the time frame relevant to the choice. p. 471.

---

i. EXPENSES, § 122 — Electric — Wholesale power purchases — Prudence.

[N.H.] Statement, by the commission, that in assessing the prudence of the actions of two electric utilities that elected to purchase wholesale electric power for resale from an affiliate rather than from an existing full requirements service provider, it was reasonable to expect the utilities, which did not generate any of their own power, to engage in a thorough analysis of

price, uncertainty, reliability, and any other reasonable concern with reasonable frequency; the analysis should have occurred at the time of rendering notice to the existing supplier and then been repeated at various times when full requirements service from that supplier was still an option. p. 472.

APPEARANCES: Dom S. D'Ambruoso, Esq. of Ransmeier & Spellman and Paul K. Connolly, Esq. of LeBoeuf, Lamb, Leiby & MacRae on behalf of Concord Electric Company and Exeter & Hampton Electric Company, and UNITIL Power Corporation; Martin C. Rothfelder, Esq., Dr. Sarah Voll, Eugene Sullivan, and Arthur Johnson on behalf of the Staff of the Commission; Joseph Rogers, Esq. on behalf of the Consumer Advocate.

LIMITED APPEARANCE: Thomas B. Getz, Esq. on behalf of Public Service Company of New Hampshire.

Page 467

By the COMMISSION:*(116)

REPORT

I. Introduction and Summary

This case involves the filing of proposed tariffs by Concord Electric Company (Concord) and Exeter & Hampton Electric Company (Exeter) and the investigation of related matters. The proposed tariffs involve rate changes that result from Concord and Exeter terminating receipt of all its power requirements from Public Service Company of New Hampshire (PSNH) and beginning such service from UNITIL Power Corporation (UNITIL Power). The rates that were proposed for October 1, 1987 were higher than the rates that would have resulted under the previous supplier, Public Service Company of New Hampshire (PSNH). The Commission, via this Report and the Order attached hereto, finds the Concord and Exeter power purchasing practices reasonable and approves the Concord and Exeter tariffs based upon those practices.

II. Procedural History

On June 25, 1986, UNITIL Service Corp. ("UNITIL Service") filed the UNITIL System Agreement (the "Agreement") dated June 19, 1986 and executed among UNITIL Power, Concord, and Exeter. Under the Agreement, UNITIL Power agreed to provide the requirements of Concord and Exeter for wholesale power commencing October 1, 1986. Concord, Exeter and UNITIL Power, hereinafter referred to together as "the petitioners", requested that the Commission approve the Agreement to the extent of the Commission's jurisdiction under N.H. Rev. Stat. Ann. §366 and under the review criteria established in Re Sinclair Machine Products, Inc., 126 N.H. 822 (1985). They further requested that the Commission approve appropriate tariff changes.

The Commission opened this docket to investigate, pursuant to N.H. Rev. Stat. Ann. §§366:5, 365:5, and 365:19 (1984), whether the Agreement and the issues involved in its implementation as of October 1, 1986, including the proposed power supply contracts, are just, reasonable, and in the public good. Re UNITIL Service Corp., DE 86-196, Order of Notice (August 13, 1986). Concord and Exeter filed revisions to their tariffs, on September 2nd and

15th respectively, to reflect purchased power adjustment and fuel adjustment. These tariffs were suspended in Re UNITIL Service Corp., DE 86-196, Order No. 18,421 (Sept. 30, 1986).

On October 3, 1986 Concord and Exeter filed a motion for interim approval of its purchased power adjustment and fuel adjustment charge tariff revisions. We interpreted this motion as a request for temporary rates under N.H. Rev. Stat. Ann. §378:27 (1984). We approved the proposed rates on a temporary basis for effect on October 3, 1986, and ordered Concord and Exeter to file the temporary tariffs. Re UNITIL Power Corp., DE 86-196 Supplemental Order No. 18,432, 71 NH PUC 580 (1986). The temporary rate tariffs were approved as in compliance with the Commission's Order. Re UNITIL Service Corp., DE 86-196, Order No. 18,443 (Oct. 16, 1986). Changes in the Concord and Exeter rates approved by the Commission during the pendency of this docket were authorized as temporary rates due to the pendency of this case. See e.g. Docket No. DR 87-102, Re Concord Electric Co., Report and Order No. 18,733 (June 30, 1987); Docket No. DR 87-101, Re Fuel Adjustment Clause, Report and Order No. 18,731, 72 NH PUC 274 (1987); Docket DE 86-196, Re UNITIL Service Corp., Fourth Supplemental Order No. 18,653 (April 28, 1987); and Docket No. DR 87-5, Re Concord Electric Co., Order No. 18,539 (January 19, 1987).

The Commission held a hearings on the matter on September 5, 22, 24, and 26, 1986. The petitioners filed their brief on this matter on November 5, 1987. The petitioners filed other motions while this case was pending, as discussed infra.

On October 24, 1986, the Commission issued an order modifying its on the record

action regarding certain confidential information. Third Supplemental Order No. 18,457 (October 24, 1986).

III. Positions of the Parties

[1, 2] The only parties to this proceeding were the petitioners and the Commission Staff. The petitioners spoke with one voice throughout the proceedings. Under the initial filing by George R. Gantz, the Assistant Vice President for Regulatory Affairs, the petitioners asked the Commission to review the agreement between Concord, Exeter, and UNITIL Power, "to the extent of the Commission's jurisdictions", under N.H. Rev. Stat. Ann. Chapter 366 (the affiliate contracts statute) and pursuant to the review criteria set forth in Re Sinclair Machine Products, Inc., 126 N.H. 822 (1985) [hereinafter cited as Sinclair]. N.H. Rev. Stat. Ann. Chapter 366 involves the Commission's review of the reasonableness of contracts among utilities and their affiliates as that term is defined in the statute. Sinclair involves a review of the reasonableness of an electric utility's practices in purchasing power as a part of considering the reasonableness of rates based upon such purchases.

The New Hampshire Commission has authority to review affiliate contracts to determine whether the contracts are just and reasonable. N.H. Rev. Stat. Ann. §366:5 (1984). However, as stated above, the agreement in this case among Concord, Exeter, and UNITIL Power Corp. involves the provision of electric service to Concord and Exeter for resale by Concord and Exeter. In the Federal Power Act, the Congress expressed a clear intent to pre-empt wholesale sales of electricity in interstate commerce except those which Congress made explicitly subject

to regulation by the states. Nantahala Power & Light Co. v. Thornburg, 476 U.S. 105, 74 PUR4th 464, 473, 90 L.Ed.2d 943, 106 S.Ct. 2349 (1986); Federal Power Commission v. Southern California Edison, 376 U.S. 205, 215-16, 52 PUR3d 321, 327, 11 L.Ed.2d 638, 84 S.Ct. 644 (1964). The Federal Power Act defines wholesale sales of electricity as any sale of electricity for resale 16 U.S.C. §§824(b), 824(d).

The Supremacy Clause of the United States Constitution provides Congress with the power to pre-empt state law. U.S.C.A. Const. Art. 6, cl. 2. Pre-emption occurs when Congress, in enacting a federal statute, expresses a clear intent to pre-empt state law. Jones v. Rath Packing Co., 430 U.S. 519, 51 L.Ed.2d 604, 97 S.Ct. 1305 (1977). Acts of the state to regulate commerce must fall "... when they conflict with or interfere with federal authority over the same activity." Chicago & North Western Transp. Co. v. Kalo Brick & Tile Co., 450 U.S. 311, 67 L.Ed.2d 258, 101 S.Ct. 1124 (1981). This is the type of action the Congress has taken via the Federal Power Act. Thus, as the agreement discussed above is a FERC tariff on rates and terms of wholesale service, the Commission has been preempted by the FERC and cannot directly act upon the reasonableness of the FERC tariff under N.H. Rev. Stat. Ann. Chapter 366 or any other statute.

Despite this preemption, the Commission still maintains jurisdiction over the retail electric rates of Concord and Exeter. Pursuant to this power, the Commission may consider the reasonableness of the Concord and Exeter purchases of power as part of considering the reasonableness of Concord's and Exeter's rates. Sinclair, supra, 126 N.H. at 833. In fact, the Commission not only has jurisdiction to consider such rates, but has a duty to assure that utilities such as Concord and Exeter meet their burden of proof in showing the reasonableness of the purchases when the Commission acts upon rates that are based upon such purchases. Id., 126 N.H. at 834, 835.

V. Findings of Fact

Concord and Exeter transmit and sell electricity at retail in New Hampshire pursuant to regulation of the New Hampshire PUC. In 1985, Concord and Exeter were consolidated into the UNITIL Corporation.

Despite the consolidation, Concord and Exeter remain as separate entities for many purposes. See: Re Concord Electric Co., 69 NH PUC 701 (1984).

UNITIL Power is a subsidiary of the UNITIL Corporation. UNITIL Power was created to provide a power supply for Concord and Exeter under the control of those Companies. UNITIL Power has provided Concord and Exeter with their entire requirements for power since October 1, 1986. UNITIL Power thus replaced PSNH as the full requirements supplier of power to Concord and Exeter.

In order to change power suppliers from PSNH to UNITIL Power, on September 7, 1984 Concord and Exeter provided notice to PSNH that they would terminate their PSNH full requirements service after September 30, 1986. The terms of the tariff under which PSNH provided service to Concord and Exeter authorized the termination of service by Concord and Exeter upon providing notice of termination two years in advance of such termination. PSNH attempted, albeit unsuccessfully, to have the FERC require Concord and Exeter to continue to

receive service from PSNH beyond the two year time period. See: Re Public Service Co. of New Hampshire, 31 FERC 61,267 (June 4, 1985) and 32 FERC 61,251 (August 20, 1985) (order denying rehearing). See generally: NHPUC docket no. DR 86-122, Re Public Service Co. of New Hampshire, Report and Order No. 18,726 at 52-55, 72 NH PUC 237, 259-61 (1987).

Concord and Exeter exercised their right to terminate service from PSNH due to their concern over the price and reliability of PSNH as a power supplier. From the time notice was given until late fall 1985, Concord and Exeter considered reentering into full requirement service with PSNH as one of their power supply options. Concord and Exeter did in fact negotiate with PSNH over the potential for full or partial requirements service as part of its overall investigation of various power supply options. Discussions and consideration of PSNH as having a role in being able to contribute to part of the Concord and Exeter power supply continued until approximately August, 1986. At the time of the hearing, PSNH did not have any role in providing the Concord and Exeter power supply after September 30, 1986. Central to the Concord and Exeter decision to terminate its receipt of full requirement service from PSNH for the potential bankruptcy and financial uncertainty facing PSNH. By the fall of 1985, concern over the financial integrity and bankruptcy of PSNH declined and price was the primary concern in choosing between PSNH and other alternatives.

Concord and Exeter found no candidate to provide either or both of them with full requirements service to replace PSNH. According to Concord and Exeter, the only reasonable candidate for providing such service was New England Power Company. However, that Company was not interested in providing full requirements service. Consideration of other candidates to provide full requirements service occurred prior to deciding to create or use an entity such as UNITIL Power Corp.

Concord and Exeter, through their affiliate UNITIL Power, the formation of which the Commission approved on December 31, 1984, proceeded to contract for a power supply for Concord and Exeter. Eventually, UNITIL Power contracted for a power supply for Concord and Exeter and began providing service effective October l, 1986. The power supply was designed to meet various criteria developed by the Company. The guidelines themselves and testimony about the guidelines indicates that the power supply was designed to be diverse, flexible, reliable, and economic. Diversity herein includes, among other things, different types of units (i.e. baseload, intermediate and peaking), limited exposure to any particular unit and diversity of fuels.

As a part of the change of power suppliers, Concord, Exeter, and UNITIL Power became members of the New England Power Pool (NEPOOL). NEPOOL was formed to provide reliability and economics in power supply through consolidated

Page 470

planning and dispatch of generation and transmission resources. Under the NEPOOL arrangement, the generation and transmission of participating utilities are interdependent. Thus, the utilities share in the benefits, as well as the problems, of the New England wide generation and transmission.

When looking at providing electrical service, reliability is the ability to continually supply customers with electricity. With regard to reliability of distribution withinthe service territory of

Concord and Exeter, the change in power supply had no effect. In both circumstances, those companies control their distribution lines within their service territory. Thus, the change in power supply had no effect on that component of reliability. With regard to the effect of generation and transmission outside of the Concord and Exeter system on the reliability of Concord and Exeter's service, the change in power supply also had no effect. Prior to October 1, 1986, the reliability of Concord and Exeter related to these factors was the reliability of the NEPOOL system. Concord and Exeter received the reliability of the NEPOOL system through their full requirements service with PSNH due to PSNH's NEPOOL membership. Beginning October 1, 1986, their power supply changed, but they continued to receive the NEPOOL system reliability due to their own NEPOOL memberships. This finding on reliability would have been the only reasonable result of an analysis done in 1984, 1985, or at any time since then.

With regard to price, the Commission finds that most of the evidence in the record consists of price comparisons developed long after the decisions with regard to changing power supplies were made. An exhibit and presentation provided only after staff cross-examination indicated that comparative analysis was done at one point comparing the price of PSNH to a power supply that UNITIL Power would provide. However, the Commission cannot conclude from that analysis that Concord and Exeter thoroughly analyzed at various points throughout the fall 1984 through fall 1985 time frame the potential costs of full requirements service from PSNH versus the potential costs of alternatives thereto. The Commission is also unable to conclude that the five year period analyzed was a reasonable basis for the ten year period that Concord and Exeter contracted for with UNITIL Power Corp. under the Agreement.

The Commission further finds that UNITIL Power Corp. has succeeded in putting together a diverse power supply based upon what is available in the New England market. While this is an after-the-fact type of finding, the Commission believes that the record indicates Concord and Exeter's investigation of the power supply market during 1985 made them aware of the potential for such a power supply as an alternative to PSNH.

The Company contends that from the fall of 1984 through the fall 1985 time frame, PSNH, from the standpoint of a customer such as Concord or Exeter, provided a perception of uncertainty and of potential rate shock type risk. This risk perception from that time frame comes from PSNH's relatively high, undiversified investment in and reliance on a single power source: the Seabrook I nuclear power plant. Uncertainty existed regarding the date of this plant's initial operation, and regarding the ratemaking treatment of that plant. This uncertainty was perceived by Concord and Exeter in the 1984-1985 time frame by both observing Seabrook and the nuclear power industry in general.

VI. Commission Analysis

[3] The Commission does not have significant briefs or argument before it on the standard to apply in assessing the prudence of the actions of Concord and Exeter. Thus, for purposes of this case, it will borrow from Commissions in other states. In Re Salem Nuclear Generating Station, 60 Pa PUC 249, 255, 70 PUR4th 568, 574 (1985) the Pennsylvania Commission stated the following:

Prudence is that standard of care which a reasonable person would be expected to exercise under the same circumstances encountered by utility management at the time decisions had to be made. In determining whether a judgement was prudently made, only those facts available at the time of the judgement was exercised can be considered. Hindsight review is impermissible.

... The prudence standard recognizes that reasonable persons can have honest differences of opinion without one or the other necessarily being "imprudent". (Emphasis in original)

The New York Commission has indicated that:

the company's conduct should be judged by asking whether the conduct was reasonable at the time, under all the circumstances, considering that the Company had to solve its problem prospectively rather than in reliance on hindsight. In effect, our responsibility is to determine how reasonable people would have performed the task[s] that confronted the company. (citation omitted). Re Consolidated Edison Co. of New York, Inc., 45 PUR4th 325, 331, Opinion No. 82-2 (1982).

The Commission will apply a standard of reasonableness herein consistent with the quotations above.

[i] Neither Concord nor Exeter generate any of their own power. Thus, the question of a power supply was clearly one of the largest questions facing Concord and Exeter. The Commission believes it is reasonable to expect Concord and Exeter to engage in a thorough analysis of price, uncertainty, reliability, and any other reasonable concern with reasonable frequency. Specifically, it seems reasonable in this case that such analysis should have occurred at the 1984 time of rendering its notice and then repeated at various times during which PSNH full requirements service was still available as an option. Based on the record in this case, the Commission can only conclude that Concord and Exeter's analysis of price and reliability and the situation of PSNH did not come up to these standards. Analysis of all these matters was, under the evidence presented at this hearing, either superficial or nonexistent, and were generally not repeated during the relevant time frame during which it was still possible to receive all requirements service from PSNH. In addition, the top management seemed unfamiliar with the basic criteria upon which the decision was made.

Despite these deficiencies in the decisional process, the choice between PSNH and the prospective power supply of UNITIL Power was in part perceived as a choice between the uncertainty regarding PSNH's large asset of Seabrook as described above, versus a power supply based upon a diverse power mix that the New England market could provide. The decision upon the latter, along with the knowledge of the human resources available to put that power supply together, provided a reasonable basis upon which to act during the 1984 through late fall 1985 time frame relevant to the choice. Thus, the Commission approves the tariffs reflecting the purchases from UNITIL Power Corp. as permanent tariffs. The Commission similarly approves all tariffs placed into effect as temporary during the pendency of this proceeding as permanent rates.

VII. Post Hearing Motions

On February 5, 1987, the petitioners filed a motion for leave to file newly discovered materials. In its motion, this Company's request that the Commission consider various materials

filed therewith. Part of the materials are the results of discovery that was received by the petitioners since October 1986. Another part is a study developed by the petitioners in late 1985 that allegedly demonstrates that PSNH's offer of continued requirements service to

Concord and Exeter was not competitive with other alternatives.

The discovery materials were, it seems, new information to Concord and Exeter upon their receipt after October 1986. It is not information used by Concord and Exeter on their decisions in 1984 and 1985. The Commission does not see how this material will assist them in reviewing the reasonableness of the Concord and Exeter decisions from September 1984 through late fall 1985. Thus, the Commission declines to consider that material.

The analysis of the competitiveness of PSNH's offer of requirements service is potentially relevant to the Commission's inquiry in this docket. However, the meaning of the late filed study, the method of its development and the assumptions therein are not clear. Thus, the Commission declines to consider these materials in rendering its decision herein.

On April 10, 1987, counsel for the petitioners requested leave to file an updated exhibit by petitioners. That exhibit updates an earlier exhibit requested by the Commission comparing rates for Concord and Exeter based upon purchases from UNITIL Power Corp. versus rates based upon Concord and Exeter continuing to full requirements service under their previous arrangement with PSNH. The changes in the April 10 exhibit is the reflection of the entire requested PSNH FERC rate increase in the PSNH rates, the reflection of additional actual fuel cost data for UNITIL Power and PSNH, and the reflection of a May 1, 1987 anticipated UNITIL Power Corp. wholesale rate decrease. The Commission shall accept this as an additional exhibit, but finds it of little usefulness. Orders issued by the FERC indicate that the PSNH rates upon which this exhibit is based were placed into effect subject to refund and were in fact adjusted downward due to a settlement at the FERC. Further, as the PSNH rates in the late filed exhibit did not go into effect until May, 1987, the prior exhibit is still relevant with respect to rates in effect from October 1, 1986 — April 30, 1987.

Our Order will issue accordingly.

SUPPLEMENTAL ORDER

Based on the foregoing Report, which is incorporated herein by reference, it is

ORDERED, that all tariffs made temporary for Concord and Exeter due to the pendency of the review in this docket are hereby made permanent; and it is

FURTHER ORDERED, that the motion for leave to file newly discovered materials is denied as is further described in the foregoing Report; and it is

FURTHER ORDERED, that the motion for leave to file updated exhibit by the petitioners is granted as further described in the foregoing Report.

By order of the Public Utilities Commission of New Hampshire this twenty-eighth day of September, 1987.

FOOTNOTES

*Commissioner Linda G. Bisson did not participate in this decision.

==========

[Go to End of 60363]

72 NH PUC 473

Douglas W. Meader
v.
New England Telephone and Telegraph Company

DC 87-106
Order No. 18,858

New Hampshire Public Utilities Commission

September 29, 1987

REPORT on corrective actions taken by a local exchange telephone carrier to improve poor service.

SERVICE, § 450 — Telephone — Interruptions, complaints, and trouble service — Corrective actions.

[N.H.] Discussion by the commission, reporting on corrective actions taken by a local

Page 473

exchange telephone carrier to improve poor service to a customer who had experienced persistent telephone trouble, particularly false ringing and static, and clos

ing the docket after all problems had been cleared.

By the COMMISSION:

REPORT

Since 1984, Douglas W. Meader, RR1, Box 113, Center Ossipee, New Hampshire, had been troubled by telephone problems, particularly false ringing and static. Despite repeated trouble reports to New England Telephone, Meader's problems persisted. Frustrated by the inability to free his telephone service from continuing difficulties, Mr. Meader contacted this Commission seeking a hearing. That request was granted and the hearing held on July 13, 1987.

At the hearing, Mr. Meader described the telephone problems he had been experienced and New England Telephone personnel explained what corrective actions had been taken to eliminate these problems. Despite all this activity, the poor telephone service persisted. As a last resort, NET personnel suggested that a trap be put on Mr. Meader's line to eliminate any possibilities that the difficulties were related to harassment calls. Mr. Meader agreed to this exercise and the trap was installed for approximately three weeks. No calls were trapped in this period and Mr. Meader reported improved service. Commission staff, NET personnel and Mr. Meader agreed to continue the exercise for another week or so and during the latter period, NET trapped two calls originating at a business service in Ossipee. Investigation revealed no harassment involved, but it did isolate the difficulty to a defective analog subscriber channel unit assigned to that business telephone. It was replaced and the problem cleared.

To remove any doubts that the source had finally been found, NET installed the channel unit in another exchange where the problem was replicated. Since all problems have been cleared, this docket can be closed. Our order will issue accordingly.

ORDER

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

ORDERED, that docket DC 87-106, be, and hereby is closed.

By order of the Public Utilities Commission of New Hampshire this twenty-ninth day of September, 1987.

==========

NH.PUC*09/30/87*[60364]*72 NH PUC 474*Public Service Company of New Hampshire

[Go to End of 60364]

72 NH PUC 474

Re Public Service Company of New Hampshire

DE 87-175
Order No. 18,859

New Hampshire Public Utilities Commission

September 30, 1987

ORDER approving extension of franchise area of an electric utility by authorizing construction of electric lines crossing unincorporated areas.

SERVICE, § 198 — Extensions — Electric — Grounds for approval.

[N.H.] The commission, which could grant permission without a hearing when all interested parties were in agreement, authorized the extension of franchise area of an electric utility by granting permission to construct electric lines crossing unincorporated areas to serve a railway

base station where (1) the utility had been requested by the railway to construct the line and to provide retail electric service, (2) the areas had not been previously franchised to any utility, (3) the only other abutter utility had consented to construction, (4) all other necessary approvals had been sought or obtained, and (5) the utility's plans to build had been well publicized, providing the public with sufficient notice.

By the COMMISSION:

ORDER

WHEREAS, on September 23, 1987 Public Service Company of New Hampshire (PSNH) petitioned this Commission in accordance with RSA 374:22, to engage in business and begin construction of electric lines to serve the Cog Railway Base Station, which lines will cross unincorporated areas known as Crawford's Purchase, Bean's Grant and Chandler's Purchase, and

WHEREAS, the areas described above have not been previously franchised to any public utility in the State of New Hampshire, and

WHEREAS, PSNH has been requested by the Cog Railway to construct the line and provide retail service to the base station, and

WHEREAS, New Hampshire Electric Cooperative Inc. (NH Coop) the only other abutter utility has consented to construction by PSNH in a letter dated September 23, 1987, and

WHEREAS, PSNH avers that all other necessary approvals have been sought or obtained; and

WHEREAS, PSNH avers that plans to build have been well publicized and sufficient notice thereby provided the public; and

WHEREAS, this Commission has been made aware of the planned line through correspondence, meetings and the PSNH 1987 Construction Plan; and

WHEREAS, RSA 374:26 allows this Commission to grant permission under RSA 374:22 without hearing when all interested parties are in agreement, it is

HEREBY ORDERED, that PSNH be authorized to serve the Cog Railway and to construct a 34.5 KV line from their existing franchise area at Fabyan Station in Bretton Woods extending along the Base Station Road and ending at the Cog Railway Base Station; and it is

FURTHER ORDERED, that all construction be in accordance with the National Electrical Safety Code, the requirements of the New Hampshire Department of Transportation and the National Forest Service where applicable and all easements or use permits required for such construction

FURTHER ORDERED, that PSNH file revised Commission Service Territory Maps within thirty days, reflecting the above changes in service territory brought about by this extension of franchise area; and specifying thereon that the maps are effective on the date hereof by authority

of the above NHPUC Order No.

By order of the Public Utilities Commission of New Hampshire this thirtieth day of September, 1987.

==========

[Go to End of 60367]

72 NH PUC 478

Re Manchester Gas Company

DR 86-293
Final Order No. 18,862

New Hampshire Public Utilities Commission

September 30, 1987

ORDER establishing permanent rates for a gas distribution utility pursuant to settlement agreement.

RATES, § 373 — Natural gas — Settlement agreement.

[N.H.] Permanent rates were adopted for a gas distribution utility, pursuant to a settlement agreement that applied increases proportionally to all existing service categories; the agreement included (1) a stipulated revenue deficiency, which the commission accepted as reasonable and supported by the evidence, (2) provisions for the recoupment of a rate deficiency incurred during the temporary rate period, (3) provisions for the bifurcation of the rate increase to reflect federal tax law changes under the Tax Reform Act of 1986, and (4) provisions for recovery by the utility of reasonable regulatory expense in addition to the aggregate amount of the recoupment.

APPEARANCES: David W. Marshall, Esq. of Orr and Reno for Manchester Gas Company; Mary C.M. Hain, Esq. and Daniel D. Lanning on behalf of the Staff of the Commission.

By the COMMISSION:

REPORT ON PETITION FOR PERMANENT RATE INCREASE

This report concerns the Petition of Manchester Gas Company ("Manchester Gas" or the "Company") for permanent rates. The report details the procedural history of the case. It provides findings of fact and analysis. This report and order allows the Company to put into effect higher permanent rates.

I. Procedural History

On January 9, 1987 Manchester Gas filed proposed tariff pages for effect February 13, 1987

containing rates designed to increase gross annual revenues by an amount of $795,201, net of cost of gas pursuant to RSA 378:3 and a request for a temporary increase in rates pursuant to RSA 378:27 in the event that the Commission suspended the effectiveness of the permanent rate tariff pages. The temporary rates requested would allow the Company to collect an additional $696,377 annually. The proposed permanent and the temporary rates apply increases proportionally to all of the Petitioner's existing service categories.

The Commission suspended the effect of the permanent rate tariffs pursuant to RSA 378:6 by Order No. 18,571 on February 11, 1987. In addition, that Order scheduled a hearing on temporary rates and a prehearing conference on procedural matters regarding permanent rates on March 17, 1987.

On March 12, 1987 the Staff of Commission (the "Staff") filed a document entitled Temporary Rate Stipulation Agreement. The Agreement entered into by the Staff and the Company recommended that the Commission authorize temporary rates at the current permanent rate level effective March 19, 1987 for the purpose of the disposition of the temporary rate request. By Order No. 18,608, issued March 20, 1987, the Commission approved the temporary rates per the agreement for effect on March 19, 1987 (72 NH PUC 95).

On March 24, 1987 the Staff filed a suggested procedural schedule agreed to by the parties. By Second Supplemental Order No. 18,610, issued March 24, 1987, the Commission approved the procedural schedule. A hearing on the merits of the permanent rate increase was, thereby, scheduled for September 15 -- 18, 1987.

On March 24, 1987, the Commission

Page 478

issued Third Supplemental Order No. 18,612 correcting the Second Supplemental Order No. 18,608. Order No. 18,612 noted that Order No. 18,608 should have indicated that temporary rates applied to bills rendered on and after March 19, 1987 as opposed to the language in 18,608, that stated that temporary rates applied to service rendered on or after March 19, 1987, Order No. 18,612 acted to amend Order No. 18,608.

The Staff filed on August 12, 1987, a motion to extend its testimony filing date from August 14, to August 21, 1987. Such motion was granted by Fourth Supplemental Order No. 18,789 (Aug. 14, 1987).

At the hearing on the merits the Company presents a Stipulation Agreement dated September 15, 1987 entered into between the Staff and Manchester Gas. The Stipulation Agreement was intended to dispose of all issues before the Commission.

II. Positions of the Parties

The Company and the Staff entered into a settlement the purpose of which was to dispose of all aspects of this case. For purposes of discussing the settlement agreement and matters at issue in this proceeding, the section below is divided among the Revenue Deficiency and Recoupment of the Temporary Rate Deficiency.

A. Revenue Deficiency

For the purpose of calculating the revenue deficiency the parties stipulated that the rate of return would be calculated using a cost of common equity of 12.67 percent, a cost of preferred stock of 7.00 percent, a cost of long term debt of 10.53 percent, and a cost of short term debt of 8.75 percent, producing an overall weighted cost of capital of 11.30 percent, based upon the Company's capital structure as of June 30, 1987, proformed for certain known changes to common equity and long term debt and with the short term debt level related to the level of cash working capital.

The stipulated net utility operating income is $1,423,034 utilizing the test year ending September 30, 1986 proformed for the following:

1. weather normalization;

2. vehicle commuting expense;

3. electricity expense;

4. the change in federal corporate income tax (Tax Reform Act of 1986);

5. an allocation of computer installation expense from EnergyNorth, Inc. (the Company's parent) to Concord Natural Gas Corporation;

6. pro forma interest expense;

7. an increase in payroll expense realized no more then twelve months beyond the end of the test year;

8. amortization of non-code excess deferred income taxes over a three year period; and

9. adjustments to pension costs.

The parties further agreed that the rate base will be an average rate base, computed utilizing thirteen (13) monthly balances, of $15,402,302. The rate base calculations includes the working capital allowance as calculated in Settlement Exhibit 3(A).

B. Recoupment of Temporary Rate Deficiency

The Staff and the Company agreed that the permanent tariffs would be based on the 34 percent tax rate. The tax rate used to calculate the under recovery that occurred during the period of temporary rates, would be applied in two levels to reflect the change in the federal tax laws under the Tax Reform Act of 1986 ("TRA").

Page 479

From March 19, 1987, the effective date of temporary rates through and including June 30, 1987, the 46 percent tax rate was used pursuant to the tax laws in effect prior to TRA. From July 1, 1987 through August 31, 1987, the period temporary rates were in effect after TRA became effective, a 34 percent tax rate was used. These tax rates would result in an annualized increase of $818,599 and $480,949 base operating revenues for the 46 percent tax rate portion and 34 percent tax rate portion of the temporary rate period, respectively.

The agreement provided for a recoupment of revenue deficiencies during the temporary rate period (March 19, 1987 — September 30, 1987) as follows:

The Company shall recoup the difference between (a) the amount billed for gas by the Company during the period from March 19, 1987 to June 30, 1987, inclusive, under the temporary rates established in the earlier Commission proceeding and (b) the amount the Company would have billed for gas during that period had permanent rates been in effect throughout that period designed to produce (on the basis of sales billed during the test year) $818,599 per annum more than the temporary rates for March 19, 1987 through June 30, 1987.

From July 1, 1987 to October 1, 1986 the Company shall recoup the difference between (a) the amount actually billed for gas by the Company during the period under the temporary rates established including July l, 1987 to the effective date of permanent rates (October 1, 1986) and (b) the amount the Company would have billed for gas during that period had the permanent rates been in effect for billings throughout that period. The parties also agreed that the Company could recover regulatory expense associated with the present proceeding in addition to the aggregate amount of the recoupment discussed above.

The recoupment rate surcharge shall be designed to recoup all amounts specified above over a twelve (12) month period in accordance with the same methodology reflected in the September 30, 1986 filing made by the Manchester Gas Company in Docket DR 85-214. The Company shall file appropriate surcharge tariffs and supporting information on or before October 15, 1987. The surcharge shall be effective for all bills rendered on and after November 1, 1987.

III. Commission Analysis

The Commission finds that the revenue requirement as developed above is supported by the evidence and is reasonable. Therefore, we accept it for resolution of this particular petition in accordance with the agreement.

The proposed increase ($480,949) will be effective as of October 1, 1987, pursuant to the stipulation. The Company shall file a proposed calculation of recoupment for the loss of revenue during the period temporary rates were in effect (March 19, 1987 through September 30, 1987). This calculation will adopt the stipulated bifurcated increase, computing rates at an annualized increase in revenue of $818,599 for the period of March 19, 1987 through June 30, 1987 and changing to an annualized increase in revenues of $480,949 for the period July 1, 1987 through September 30, 1987.

In addition, we only approve the stipulation agreement to the extent that it allows the Company to recover the reasonable regulatory expense associated with the present proceeding. If necessary, we will investigate the reasonableness of these expenses upon the Company filing of same.

Our order will issue accordingly.

FINAL ORDER

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

ORDERED, that the proposed stipulation between the Staff and Manchester Gas Company is approved; and it is

FURTHER ORDERED, that the Company file the following:

a.) revised tariff pages reflecting the increase and bearing an effective date of all bills rendered on or after October 1, 1987;

b.) a detailed calculation of the amounts undercollected by the Company comparing the permanent increase to the temporary rate increase granted by the Commission in Report and Order No. 18,607 issued on March 19, 1987 (72 NH PUC 93);

c.) an affidavit detailing and describing the rate case expenses the company seeks to recover, including an hourly breakdown of professional fees that shows tasks accomplished; and

d.) a mechanism that will allow the Company to refund the difference between the amounts overcollected and its rate case expenses.

By order of the Public Utilities Commission of New Hampshire this thirtieth day of September, 1987.

==========

NH.PUC*10/01/87*[60365]*72 NH PUC 475*CMB Construction Company, Inc.

[Go to End of 60365]

72 NH PUC 475

Re CMB Construction Company, Inc.

DS 87-152
Order No. 18,860

New Hampshire Public Utilities Commission

October 1, 1987

PETITION to construct and maintain sanitary sewer lines across state-owned railroad property; approved.

CERTIFICATES, § 88 — Factors affecting grant — Public health — Sewer mains and lines — License to cross state-owned property.

[N.H.] License was granted, subject to the provision of notice to the public, authorizing the construction and maintenance of sewer lines under and across state-owned railroad property, because the lines were necessary to fulfill health and safety requirements of certain developments and would not substantially affect public rights in the property.

Page 475

By the COMMISSION:

ORDER

WHEREAS, on August 5, 1987, CMB Construction Company, Inc. (CMB) filed with this Commission a petition seeking license for the construction and maintenance of sewer lines under and across State-owned railroad property in Lincoln, New Hampshire; and

WHEREAS, such sewer lines are to connect sewer service to the property of Lincoln Mill Associates, Loon Mountain Recreation Corporation and the Satter Corporation; and

WHEREAS, such license is necessary for said companies to fulfill health and safety requirements of said developments; and

WHEREAS, the Commission finds such crossing will not substantially affect public rights in said land; and

WHEREAS, the Commission also finds that the public should be given 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 October 16, 1987; and it is

FURTHER ORDERED, that CMB Construction Company, Inc. provide said notice by one-time publication of a copy of this order in a newspaper generally circulated in the affected area, such publication to be no later than October 8, 1987 and documented by affidavit to be filed with this Commission on or before October 22, 1987; and it is

FURTHER ORDERED, NISI, that CMB be, and hereby is, granted license under RSA 371:17 et seq. to construct and maintain sanitary sewer lines across State-owned railroad property in Lincoln, New Hampshire as depicted in drawing No. 87-69 on file with this Commission and further identified as being in the vicinity of Railroad Valuation Stations 1110+75 and 1115+75, Map V30/22; and it is

FURTHER ORDERED, that all construction conform to requirements of the Bureau of Railroads, Department of Transportation; and it is

FURTHER ORDERED, that such authority shall be effective 20 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; and it is

FURTHER ORDERED, that the decision in this order relates solely to the crossing of State-owned railroad property and does not in any way exempt CMB from sewer utility status should such be determined by this Commission in the future.

By order of the Public Utilities Commission of New Hampshire this first day of October, 1987.

==========

NH.PUC*10/01/87*[60366]*72 NH PUC 476*Public Service Company of New Hampshire

[Go to End of 60366]

72 NH PUC 476

Re Public Service Company of New Hampshire

DE 87-140
Supplemental Order No. 18,861
New Hampshire Public Utilities Commission
October 1, 1987

PETITION for license to cross public waters with electrical distribution lines; approved.

ELECTRICITY, § 6 — Wires and cables — Authorization for electric distribution lines — License to cross public waters.

[N.H.] Following construction of a new bridge by the state that required relocation of an existing distribution line, an electric utility was granted license to cross public waters with an aerial distribution line, subject to the provision of notice so that the public had an opportunity to respond, because the utility needed to construct, operate, and maintain distribution lines, an integral part

Page 476

of its electric system, to meet reasonable requirements of service.

By the COMMISSION:

SUPPLEMENTAL ORDER

WHEREAS, on July 21, 1987, the Public Service Company of New Hampshire (PSNH) filed with this Commission its petition under RSA 371:17-20 for license to maintain electric lines over and across public waters of the Androscoggin River located in Shelburne, New Hampshire; and

WHEREAS, in order to meet the reasonable requirements of service to the public, it is necessary for the Petitioner to construct, operate and maintain distribution lines consisting of wire and cables over and across certain public waters in the State of New Hampshire, which lines are an integral part of its electric system; and

WHEREAS, the proposed such crossing consists of constructing one aerial 7.2 kV distribution line over and across the Androscoggin River where identified in the Petition as in Exhibit 1A1 and constructed as indicated on Plan D-7649-358 (Exhibit 1A2); and

WHEREAS, such construction is necessary because the State of New Hampshire has relocated and built a new bridge across the Androscoggin River affecting a section of North Road requiring the relocation of the existing 7.2 kV electric distribution line; and

WHEREAS, the relocated crossing will be approximately 570 feet in overall length with approximately 207 feet over the water on supporting structures maintained by the Petitioner

pursuant to easements already obtained; and

WHEREAS, the proposed relocation and construction appears to be in the public good; and

WHEREAS, this commission issued Order 18,792 on August 18, 1987 which failed to be published in a timely fashion (72 NH PUC 357); 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 October 16, 1987; and it is

FURTHER ORDERED, that the petitioner effect said notification by publication of a copy of this supplemental 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 October 8, 1987 and documented in an affidavit to be filed with this office on or before October 22, 1987; and it is

FURTHER ORDERED, NISI, that petitioner be authorized pursuant to RSA 371:17, et seq. to place and maintain electric lines over and across the public waters of the Androscoggin River in Shelburne, New Hampshire; and it is

FURTHER ORDERED, that all construction shall meet the requirements of the National Electrical Safety Code and all other applicable safety standards; and it is

FURTHER ORDERED, that such authority shall be effective twenty days from the date of this Order 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 first day of October, 1987.

==========

NH.PUC*10/01/87*[60369]*72 NH PUC 482*Continental Telephone Company of New Hampshire

[Go to End of 60369]

72 NH PUC 482

Re Continental Telephone Company of New Hampshire

DR 87-177
Order No. 18,864

New Hampshire Public Utilities Commission

October 1, 1987

ORDER rejecting proposed offer of employee discount by a local exchange telephone carrier.

DISCRIMINATION, § 55 — Rates — Employee discounts — Local exchange telephone carrier.

[N.H.] A local exchange telephone carrier was not permitted to offer a 100% concession for touch calling and any three custom calling features for full-time employees in its service territory, in the absence of supporting data showing the number of employees affected, the cost of the program, and justifying a premium for touch calling in digital offices for any customer, and because the commission was concerned about

Page 482

inappropriate price signals given by employee discounts.

By the COMMISSION:

ORDER

WHEREAS, on September 21, 1987 Continental Telephone Company of New Hampshire (Contel-N.H.) filed with the Commission Section 2, Third Revised Sheet 14 of its tariff P.U.C. New Hampshire No. 11, in which it proposed to enhance Contel-N.H.'s concession to full-time employees in its service territory by offering a 100% concession for Touch Calling and any three (3) Custom Calling features; and

WHEREAS, the filing was accompanied by no supporting data concerning the number of employees affected and the cost of the program; and

WHEREAS, the Commission has noted in the past our concern regarding inappropriate price signals given by employee discounts (see, for example, Re Concord Electric Co., 70 NH PUC 665, 668 [1985]); and

WHEREAS, Contel-N.H. has provided no cost analysis to justify a premium for Touch Calling in digital offices for any customer, employee or non-employee; it is therefore

ORDERED, that Section 2, Third Revised Sheet 14 be, and hereby is, rejected; and it is

FURTHER ORDERED that Contel-N.H. may re-file said tariff with supporting data as to the cost of the program and cost analysis to justify premium charges for Touch Calling compared to Rotary dialing for any of its customers served by digital offices.

By order of the Public Utilities Commission of New Hampshire this first day of October, 1987.

==========

NH.PUC*10/02/87*[60368]*72 NH PUC 481*Industrial Cogenerators Corporation

[Go to End of 60368]

72 NH PUC 481

Re Industrial Cogenerators Corporation

DR 86-108
Supplemental Order No. 18,863

Re American Cogenics

DR 86-119
Supplemental Order No. 18,863

Re Enesco Merrimack Cogeneration, Inc.

DR 86-121
Supplemental Order No. 18,863

Re Kearsarge Power and Light

DR 86-124
Supplemental Order No. 18,863

Re Plaistow Power and Light

DR 86-126
Supplemental Order No. 18,863

Re A. Johnson Cogen, Inc.

DR 86-132
Supplemental Order No. 18,863

Re Cygna Energy Services

DR 86-133
Supplemental Order No. 18,863

New Hampshire Public Utilities Commission

October 2, 1987

REPORT clarifying comments by the commission and permitting additional time to amend or supplement post hearing submittals.

PROCEDURE, § 20 — Hearing — Post hearing submittals.

[N.H.] The commission clarified comments made on the record at the conclusion of a hearing, which had been held to give parties an opportunity to consider the information relied on by the commission in reaching a decision and to present evidence on any deficiencies in the commission's analyses; parties were permitted ten days to request an opportunity to amend or add to their post hearing submittals, because the comments may have created confusion regarding the filings.

By the COMMISSION:*(117)

REPORT

On March 6, 1987 the commission issued Report and Supplemental Order No. 18,586 (Order 18,586) granting, in part, certain motions for rehearing in the above referenced dockets (72 NH PUC 77). Accordingly, the commission established a procedural schedule to give all parties the opportunity to consider the information relied upon by the commission in reaching its decision in those dockets and present testimony on the issues before the commission,

including the opportunity to point out any deficiencies in the commission's analysis. Pursuant to Order 18,586 a hearing was held on May 12, 1987.

Upon reviewing the post hearing submittals by the parties to this proceeding, it appears that certain parties may have had a misconception regarding the purposes of the evidentiary portion of the May 12, 1987 hearing and the for filing post hearing briefs or legal memoranda. Such confusion may have arisen from the dialogue between the bench and counsel at the conclusion of the presentation of all evidence at the May 12, 1987 hearing. Upon reviewing Order 18,586, the commission is of the opinion that it addresses all questions that were raised by counsel in that dialogue. Thus, any perceived conflict or confusion created by that dialogue should be and is resolved by reliance upon Order 18,586.

In brief, the commission believes that Order 18,586 provided all parties with the opportunity to present evidence and, through the presentation of such evidence, point out any deficiencies in the commission's analyses. Through the pointing out of such deficiencies in the commission's analyses, via the opportunity to present evidence, to cross-examine and to brief this matter, the parties have the opportunity to change any and all the findings and analysis in Order 18,586 and the initial commission order in this matter, Report and Order No. 18,530, 72 NH PUC 8 (January 7, 1987).

Since the dialogue at the end of the hearing may have created confusion regarding the filing of post hearing memoranda, the commission finds it reasonable to allow parties ten (10) days to request the opportunity to amend or add to their post hearing submittals. If the commission receives any such requests, the commission or its designee shall expeditiously indicate whether such submittal shall be authorized and indicate an appropriate due date for such submittal. Any such request should indicate why an additional submittal is necessary.

Our Order will issue accordingly.

SUPPLEMENTAL ORDER

Based on the foregoing Report Regarding Additional Post Hearing Submittals, which is incorporated herein by reference, it is

ORDERED, that the on the record comments from the bench at the conclusion of the May 12, 1987 hearing are clarified as indicated in the foregoing Report, and it is

FURTHER ORDERED, that parties may request to amend or add to their post hearing submittals within ten (10) days of the date of this Order as detailed in the foregoing Report.

By order of the Public Utilities Commission of New Hampshire this second day of October, 1987.

FOOTNOTES

*Commissioner Bisson did not participate.

==========

[Go to End of 60370]

72 NH PUC 483

Re Public Service Company of New Hampshire

DR 87-151
Sixth Supplemental Order No. 18,865

New Hampshire Public Utilities Commission

October 6, 1987

ORDER granting a motion for clarification of the legal authority under which the commission would hold a hearing on a request for emergency rate relief, the issues to be addressed at the hearing, and the relationship between the issues to be addressed and certain questions of law that had been transferred to the state supreme court.

RATES, § 640 — Procedure and practice — Legal authority to schedule and hold hearings on utility rates.

[N.H.] In response to a motion for clarification of the legal authority under which it would hold a hearing on a request for emergency rate relief, the commission found that it had the legal authority to hold the hearing pursuant to RSA 378:9, which addresses the subject of emergency rates, RSA 365:5, which permits the commission to investigate rates or proposed rates on its own motion or upon the petition of a public utility, and RSA Chapters 363, 365, 374 and 378, which permit the commission to schedule and hold hearings.

By the COMMISSION:

REPORT REGARDING CONSUMER ADVOCATE MOTION FOR CLARIFICATION

On October 2, 1987 the Consumer Advocate filed a Motion for Clarification in this docket. In that motion, the Consumer Advocate prays that the Commission issue a statement of the legal authority under which the hearing in this docket scheduled for the week of October 5 is being held, that the Commission furnish a detailed

statement of the issues, and that the Commission clarify the relationship between the transfer to the Court and these hearings. Due to the filing of this motion on the afternoon of Friday, October 2, 1987, the Commission was unable to respond to the motion prior to the beginning of the October 5, 1987 hearings. The Commission instead issues this order prior to the second day of hearings on October 6, 1987.

[1] With regard to the legal authority upon which the hearing is being held, RSA 378:9 addresses the subject of emergency rates. RSA 365:5 indicates that the Commission may on its own motion or upon petition from a public utility investigate rates or proposed rates. These two specific statutes, along with the Commission powers enumerated in RSA Chapters 363, 365, 374 and 378, provide the authority upon which to hold this hearing.

With regard to the issues in this matter, the hearings are to develop evidence on the factual circumstances surrounding PSNH, its alleged emergency, and the requested relief. PSNH's costs, the reasonableness of PSNH's actions, the alleged emergency, the reasons the additional rate relief is alleged to be necessary, and the form (including rate design) of any such relief are appropriate matters related to the factual circumstances herein. There may be other matters that the parties will raise that the Commission has not anticipated. After receiving evidence on this matter, the Commission anticipates making findings of fact and deciding whether or not to provide an emergency rate increase. With regard to the Consumer Advocate's discussion that parties should know whether the Commission believes it can grant rate relief to PSNH "under the current circumstances without the Supreme Court opinion on RSA 378:30-a", the Commission cannot possibly answer that question at this time. Until the Commission makes findings of facts based upon evidence presented in this proceeding, it does not have an opinion or view of PSNH's current circumstances that it can act upon and thus cannot now answer the question as to whether it "can grant rate relief".

The relationship between the transfer to the Supreme Court and these hearings is quite straight forward. The transfer to the Court was designed to receive guidance on the relationship between PSNH's constitutional rights and the restrictions of RSA 378:30-a, as is further defined by the two questions transferred to the Court and explained in the transfer statement. In contrast, the hearings are designed to receive evidence in order to make findings of fact on PSNH's current circumstances to determine whether the Commission, under those circumstances, may (i.e. lawfully) or should (i.e. in its discretion) provide PSNH with an emergency rate increase.

The Commission issues this order to assist the Consumer Advocate. Some of the questions that the Consumer Advocate would like answered are not merely issues as we begin these hearings, but answers as to how the Commission will decide the case at the end of the hearings. For reasons discussed above, those answers shall not be forthcoming until the end of the case.

Our Order will issue accordingly.

SUPPLEMENTAL ORDER

Based on the foregoing Report Regarding Consumer Advocate's Motion for Clarification, which is incorporated herein by reference, it is

ORDERED, that the Consumer Advocate's Motion for Clarification is granted as is further detailed in the foregoing Report.

By order of the Public Utilities Commission of New Hampshire this sixth day of October, 1987.

==========

[Go to End of 60371]

72 NH PUC 485

Long Distance North of New Hampshire, Inc.
v.
New England Telephone and Telegraph Company

DE 87-192
Order No. 18,872

New Hampshire Public Utilities Commission

October 12, 1987

ORDER dismissing, as not yet ripe for consideration, a petition by an entity that had not received permission to engage in business as a public utility.

PUBLIC UTILITIES, § 10 — Regulation and control — Jurisdiction and powers — State commissions.

[N.H.] A petition for an order requiring a telephone carrier to amend its tariff by deleting all language prohibiting the resale of wide area telephone service (WATS), requested by a business entity to facilitate its provision of intrastate WATS resale services, was dismissed as not yet ripe for consideration, because the entity had not petitioned for or received permission to engage in business as a public utility within the state, and the commission therefore had not determined that the exercise of rights, privileges, or a franchise on the part of the petitioner was in the public interest.

By the COMMISSION:

ORDER

WHEREAS, on October 6, 1987 Long Distance North of New Hampshire, Inc. filed a petition that requested the Commission to issue an Order of Notice requiring New England Telephone and Telegraph Company to amend its tariff, NHPUC No. 75 §10.2.1(a) by deleting therefrom all language prohibiting the resale of wide area telephone service to facilitate the petitioner's provision of intrastate WATS resale services; and

WHEREAS, Long Distance North has not petitioned for or received permission from the Public Utilities Commission to engage in business as a public utility within this State and the Commission has not, therefore, determined that the exercise of rights, privileges, or a franchise on the part of this business is in the public interest; it is hereby

ORDERED, that the petition of Long Distance North of New Hampshire, Inc. be, and hereby is, dismissed as it is not yet ripe for consideration by this commission.

By order of the Public Utilities Commission of New Hampshire this twelfth day of October, 1987.

==========

NH.PUC*10/14/87*[60372]*72 NH PUC 485*Public Service Company of New Hampshire

[Go to End of 60372]

72 NH PUC 485

Re Public Service Company of New Hampshire

DR 87-151
Sixth Supplemental Order No. 18,873
New Hampshire Public Utilities Commission
October 14, 1987

ORDER reporting findings of basic fact regarding an electric utility's rate request and providing data on the utility's investment in the Seabrook nuclear generating facility.

---

1. RATES, § 175 — Reasonableness — Value or cost of property — When revenues plainly inadequate — Statutory provisions.

[N.H.] The commission found that an electric utility would need additional revenues from a rate increase in order to meet its cash obligations, nevertheless, the commission found that the methodologies that must be utilized under traditional rate-making procedures to provide such revenues — i.e., inclusion of construction work in progress in rate base, enhancement of expenses to reflect capitalization that exceeds the

Page 485

allowable rate base, or enhancement of the rate of return — seemed to violate the dictates of RSA 378:30-a (the so-called anti-CWIP statute) and related supreme court cases. p. 490.

2. VALUATION, § 224 — Construction work in progress — Rate base treatment — Seabrook investment — Anti-CWIP statute.

[N.H.] In response to request from the New Hampshire Supreme Court for findings of basic fact regarding investment by an electric utility in the Seabrook Unit I nuclear generating facility,

examining specifically the period between inclusion in rate base of construction work in progress (CWIP) and the effective date of an anti-CWIP statute, the commission presented a schedule of utility investment in the unit. p. 491.

APPEARANCES: Martin L. Gross, Esq. of Sulloway, Hollis & Soden and Thomas R. Jones, Esq. of Cahill, Gordon & Reindel for Public Service Company of New Hampshire; Michael Holmes, Esq. and Joseph W. Rodgers, Esq. for the Consumer Advocate; Robert C. Hinkley, Esq. and Vaughn Tamzarian, Esq. of Hinkley and Hahn for the Campaign for Ratepayers Rights; Ian Wilson for the Business and Industry Association; Mark Bennett, Esq. for the City of Nashua, Town of Rye, and City of Manchester; Jeffrey J. Zellers, Esq. of Hall, Morse, Gallagher & Anderson for the New Hampshire Electric Cooperative, Inc.; Martin C. Rothfelder for the commission staff and the commission.

By the COMMISSION:

Report Regarding Findings Pursuant to September 2, 1987 Supreme Court Order

The commission opened this docket on August 5, 1987 pursuant to a petition by Public Service Company of New Hampshire (PSNH) to alter existing rates due to emergency circumstances. In addition to requesting such rate relief, PSNH requested that the commission transfer a question of law to the New Hampshire Supreme Court pursuant to RSA 365:20. On August 11, 1987, the commission transferred to the supreme court two questions related to the PSNH request pursuant to RSA 365:20. Report Regarding Request for Transfer and Order No. 18,788, 72 NH PUC 349 (1987). PSNH filed the statement regarding the transfer of these two questions with the New Hampshire Supreme Court on August 13, 1987. On September 2, 1987, the court deferred acceptance of the transferred questions until the commission has addressed two issues with findings of basic facts. This Report and Order, and the forthcoming supplement to it as indicated below, constitutes our findings pursuant to that Order.

I. Procedural History

On September 3, 1987, the commission issued Second Supplemental Order No. 18,812 setting procedural aspects of this proceeding to deal with the September 2, 1987 order of the supreme court. Among other things, Order no. 18,812 set September 16, 1987 as the date for a hearing to develop a record to allow the commission to make findings of basic facts regarding the issues set forth by the supreme court in the September 2, 1987 Order. On September 4, 1987, the consumer advocate filed a motion for rehearing of Second Supplemental Order No. 18,812. The commission denied the consumer advocate's motion for rehearing of Second Supplemental Order No. 18,812 on September 14, 1987 in Third Supplemental Order No. 18,827 (72 NH PUC 390).

On September 8, 1987, the consumer advocate filed a motion to transfer certain questions to the supreme court, which request was denied in Fourth Supplemental Order No. 18,828, 72 NH PUC 393 (1987).

On September 14, 1987, the Campaign for Ratepayers Rights (CRR), as did several other parties, made a filing to request that the commission make various findings of fact as a result of

its proceeding set for hearing on September 16, 1987. Before the

hearing on September 15, 1987, the commission denied CRR's request. The commission held hearings on September 16, 17, and 21, 1987 for the purposes of developing a record to make findings of fact related to the issues delineated by the September 2, 1987 supreme court Order.

At various times before and after the hearing the commission has received one or more filings on requests for findings from PSNH, CRR, and the consumer advocate. On September 22, 1987, PSNH submitted additional material in response to a request by Commissioner Bisson and asked that it be considered as an exhibit. On September 24, 1987 the consumer advocate filed a request that the commission consider certain responses to eight data requests as an exhibit in this proceeding and that the commission accept as an exhibit a revision to exhibit 19. The consumer advocate has also filed material requesting that certain portions of the transcript be stricken. This request follows up on his motion to strike that he filed on September 17, 1987, which was granted by the commission, Commissioner Bisson dissenting, with clarification on stricken portions of transcript to follow. (Tr. Sept. 17, 1987, pp. 2-28 through 2-29). The commission takes action with regard to outstanding motions infra.

II. The Supreme Court Order

The Court deferred acceptance of the transferred questions until the commission has addressed the following issues with findings of basic facts:

a. The claimed need to include some of the Company's investment in the Seabrook I reactor in the Company's rate base in order to obtain the cash required by the end of 1987 to make interest payments as they come due to pay off existing debt as it matures and to pay for the expansion of services to customers.

b. The date upon which the Commission first authorized inclusion of such investment in the rate base, and the amounts of the Company's investment prior to that date, between that date and the effective date of § 30-a (sic), and thereafter.

Hereinafter, these two issues will be referred to as "issue a" and "issue b", respectively. The court stated that it "is of the opinion that the findings can be made expeditiously after a hearing promptly convened and limited to the issues in question." The court further indicated that it anticipated providing expedited consideration to this matter after the commission has made findings. From this direction, the commission makes the findings of facts expressed below.

The various parties to the proceedings, to some extent, disagreed as to what the Court required by the two issues it had delineated. For example, "issue a" was read in various ways with regard to the meaning of "the claimed need". For example, it was unclear whether the "claimed need" was the need to place an item in rate base to provide additional dollars, or whether the Court wanted us to find either qualitative or quantitative facts about PSNH's claimed need for revenues. Thus, the findings of fact below attempt to provide findings which would answer all of those potential readings of that first issue area, except for an exact quantitative answer. Similarly, "issue b" was read in different ways with regard to what information and what dates were desired. Again, the commission has made findings of fact to provide a factual basis

for various readings of issue b.

III. Motions to Strike and Motions to Consider Additional Material

On September 24, 1987, the consumer advocate indicated that in response to the commission's directions concerning the motion to strike that was granted on the record on September 17, 1987, lines 2-7, on page 162 of the transcript for day one should be stricken from the record. PSNH responded and indicated that it had no objection to that request. The consumer

advocate has not identified any other portions of the transcript on any other day to be stricken. The commission finds the consumer advocate's request reasonable and strikes the above mentioned portion of the transcript.

Also on September 24 the consumer advocate requested that PSNH responses to eight data requests be considered as an exhibit. Those data requests are:

a. PSNH Response to OCA-137 (4 pages)

b. PSNH Response to OCA-138 (3 pages)

c. PSNH Response to OCA-139 (4 pages)

d. PSNH Response to OCA-140 (16 pages)

e. PSNH Response to OCA-141 (1 page)

f. PSNH Response to OCA-142 (1 page)

g. PSNH Response to OCA-143 (2 pages)

h. PSNH Response to OCA-144 (1 page).

The consumer advocate further requested that revised Attachments 1 and 2 to Exhibit 19 be accepted as an additional exhibit in this matter and marked as Exhibit 19A. The commission has received no objection to these two requests for exhibits. The request seems reasonably related to various information which the consumer advocate became aware of late in the proceedings. For these reasons, the commission finds the request reasonable and grants the request for the exhibits.

CRR attached eight exhibits to a filing of September 25, 1987 designated as its requests for findings. CRR designated these exhibits as A-I. They are not part of the record in this case. CRR has not requested that the commission either take notice of these matters or consider them as evidence in this proceeding. Nevertheless, CRR certainly anticipated commission use of them, for it relies upon them in its requested findings of fact. The commission generally does not encourage unanticipated late filed exhibits for consideration in a proceeding and, further, generally requires a clear request by a party as to how they would like any such materials treated. The attachments seem to go to the issue of stockholder expectations for recovery in Seabrook I. The commission finds that this issue is not relevant to the issue areas delineated by the court. Thus, the commission declines to consider these exhibits.

On September 23, 1987, PSNH submitted an eight page response (including the cover letter) to a request for information from Commissioner Bisson. The exhibit also revises an investment

number to which PSNH witness Wiggett testified. Since the document is one requested by the commission and is relevant to developing findings on PSNH's investment in Unit I, the commission shall consider this submittal as an exhibit.

IV. Findings of Fact on Issue a

With regard to issue a, PSNH takes the position that additional revenues must be raised through rate relief in order to provide service to customers, to make interest payments as they come due, to pay off existing debt as it matures, and to pay for expansion of service to customers. PSNH contends that its cash deficiency cannot be met from external financing sources, that application of conventional ratemaking methods will not meet its needs and that, absent an allowed return of approximately 52.8% on equity, inclusion of a portion of PSNH's investment in Seabrook is necessary to produce sufficient increased revenue to meet its cash deficiency.

CRR asserts that inclusion of Seabrook in rate base is not necessary because other parts of the formula for developing a revenue requirement may be adjusted to provide additional revenue.

The consumer advocate takes the position that the commission should find that there is no need to include some of the Company's investment in Seabrook I

Page 488

reactor in rate base by the end of 1987. The consumer advocate bases his position on evidence which he states indicates that PSNH will have cash available at the end of 1987 due to various PSNH actions as well as the weakness of PSNH's evidence to back-up evidence on cash deficiency.

With regard to issue a, the Court has focused on the cash needed to make interest payments as they come due, to pay off debt as it matures, and to pay for the expansion of services to customers. This constitutes a part of the overall cash obligations of PSNH. PSNH must also pay for fuel expense, payroll and a myriad of other items. The commission finds it unlikely that PSNH would be in a position to meet the cash obligations that the court has listed, along with its other cash obligations, at the end of 1987 without cash beyond that provided by current rates.

The commission believes the evidence indicates that there are usually only two sources of funds for PSNH: external financing and rates. The commission finds that the financial markets are unwilling to provide additional new funds for PSNH due to investor perceptions of the high risk of PSNH. It is possible that the financial markets would be willing to obviate PSNH's need for cash by restructuring the existing debt obligations. PSNH is currently attempting to negotiate such action, but does not anticipate that it will occur before January 1, 1988. As part of those actions, PSNH anticipates not paying a 39 million dollar interest payment due on October 15, 1987.

An increase in current rates could be provided by this commission or the Federal Energy Regulatory Commission (FERC). This commission is unaware of any proceeding before the FERC for an increase in the PSNH wholesale rates. In addition, the vast majority of the PSNH revenues come from retail sales under rates that are under the New Hampshire PUC's jurisdiction.

The record reflects two rate related sources of cash in the New Hampshire jurisdiction other than an increase in current rates awarded by this commission. First, there is the potential of delaying a refund that PSNH owes to ratepayers as a result of its placing rates into effect under bond pursuant to RSA 378:6, paragraph III in docket DR 86-122. In that case, the commission subsequently found that the appropriate level of rate relief for PSNH was less than the bonded rates PSNH had placed into effect pursuant to RSA 378:6 III. Thus, PSNH is required to refund the overcollection under the bonded rates, with said refund to be provided to customers primarily through bill credits in November, 1987, a date established by an agreement among the parties and approved by the commission in docket no. DR 86-122. The evidence indicates that this refund, along with the interest that will be paid to customers, is reasonably calculated to be approximately $21,210,796. The evidence further reflects that delay of this refund past year end would probably result in PSNH being able to continue to meet its cash obligations into 1988. PSNH's continued ability to meet its obligations in 1988 minus rate relief would require successful restructuring of its debt to substantially reduce required interest payments. PSNH has not requested authorization to delay these refunds, and the commission does not intend to, sua sponte, authorize delay of these refunds.

A second, albeit theoretical, source of additional revenues for PSNH would be rate relief related to successful appeal of its recent rate case, NHPUC docket no. DR 86-122. PSNH has appealed the commission's finding in DR 86-122 on cost of capital and on a rate base adjustment related to deferred taxes. Those issues have a value of $13,967,941 and $444,921 on an annual basis, respectively. If PSNH prevails on these issues, the revenues resulting from this would not achieve the revenues that PSNH currently claims is necessary. Unless otherwise ordered by the Court, it is proper to assume that the commission's Order in DR 86-122 is lawful and valid. The commission does not anticipate action on the appeal by the supreme court before year end. Thus, under the time assumptions above, and even under the assumption that PSNH does prevail in its appeal, this

Page 489

option does not seem to provide a route to provide timely additional cash for 1987.

[1] The third and most realistic method of providing additional cash to PSNH is a rate increase. The commission traditionally provides rate relief by applying the following formula:

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

R = E + (V-d)r, where:

R = Operating Revenues (the Revenue Requirement)

E = Operating Revenue Deductions
    (Operating Expenses)

V = Value of Rate Base (plant in service and
    working capital)

d = Accrued or Accumulated Depreciation

r = Rate of Return (return on rate base)
```

The legislature seemed to anticipate, if not require, continued use of this methodology in

adopting RSA 378:30-a, for the statute particularly mentions rate base and expense. The supreme court decision in Re Conservation Law Foundation of New England, Inc., 127 N.H. 606, 633, 634, 507 A.2d 652 (1986) seems to indicate that this formula is the methodology for this commission to set rates. See also: Re Public Service Co. of New Hampshire, 125 N.H. 46, 49, 60 PUR4th 16, 480 A.2d 20 (1984). The commission recently concluded a traditional rate case for Public Service Company of New Hampshire using this traditional formula and awarding rate relief pursuant thereto. Docket No. DR 86-122, Report and Fourteenth Supplemental Order No. 18,726, 72 NH PUC 237 (1987).

Testimony in this case indicates that there are three methodologies within traditional rate making to adjust the formula and thereby result in a higher revenue requirement and higher rates for PSNH. First, portions of the company's investment in plant that 378:30-a does not allow in rate base, such as the Seabrook nuclear reactor unit I, could be included in rate base and would thereby provide for an increase in revenue requirement. This would occur because PSNH would then earn on a larger share of its investment.

Second, PSNH's expenses could be adjusted to reflect costs of the capitalization (debt and equity) that currently are not covered in the development of revenue requirement. Under current ratemaking as constrained by RSA 378:30-a, the Company's weighted cost of capital is applied to the rate base as constrained by RSA 378:30-a. However, PSNH's capitalization unquestionably exceeds its rate base and therefore the return on current rate base is substantially less than the return needed to service the capitalization. Expenses could be adjusted to reflect the debt service or return on equity, or both, in the capitalization that is now not currently reflected in rates. However, adjusting expense to cover capitalization in excess of that reflected in the rate base would result in covering capitalization related to the Company's investment in plant which is not yet or will not be providing service to customers (such as Seabrook I or Seabrook II). Reflecting such costs in expenses would result in the financing costs of such non-operating plants to be reflected in rates. The commission believes that RSA 378:30-a prohibits such action.

Third, the commission could enhance the Company's return on equity in order to increase the return on investment allowed in rate base under RSA 378:30-a. Testimony in this case indicates that to achieve the requested rate level would require authorizing the Company to earn 52.08% on equity. Adjustments for tax might lower that to approximately 34% on equity.[1(118)] Both such returns on equity (52.08% and 34%) are far above the bounds that historically have been, or should be, awarded a utility. In the commission's opinion, authorizing such a return would merely circumvent the restrictions of RSA 378:30-a or, in other words, do indirectly what RSA 378:30-a prohibits the commission from doing directly. The supreme court has already indicated, in Re Public Service Co. of New

Hampshire, 125 N.H. 46, 55, 60 PUR4th 16, 480 A.2d 20 (1984), that the commission may not adjust the rate of return to circumvent RSA 378:30-a. Thus, adjusting the rate of return for PSNH as discussed above also seems to be prohibited by RSA 378:30-a.

Based on the foregoing, the commission finds that to put PSNH in a position where it is reasonably likely to meet its cash obligations including making interest payments as they come

due under current obligations, paying off existing debt as it matures and paying for expansion of services for customers, PSNH would need additional revenues from a rate increase. Such rate relief need not necessarily be provided by adding a portion of the company's investment in Seabrook I in the company's rate base; but one or more of the following three methodologies must be utilized under traditional ratemaking to provide such revenues: inclusion of construction work in progress in rate base, enhancement of expenses to reflect capitalization that exceeds the allowable rate base, or enhancement of the rate of return. As discussed above, all such actions seem to violate the dictates of RSA 378:30-a and supreme court cases related thereto.[2(119)]

V. Findings of Fact on Issue b

[2] The first aspect of issue b asks for a finding of "the date upon which the commission first authorized inclusion of `such investment' in rate base". The commission assumes that the term "such investment" focuses upon investment in the Seabrook I nuclear power plant referred to in issue a.

With regard to that issue, on May 25, 1978 the commission issued Report and Eleventh Supplemental Order No. 13,162 in docket no. DR 77-49, Re Public Service Co. of New Hampshire, 63 NH PUC 127, 162 (1978). In that Report and Order, the commission first authorized the inclusion of construction work in progress in rate base for PSNH effective "with all bills based on successive meter readings, the latter of which is taken on or after June 1, 1978."[3(120)] That order authorized construction work in progress to be included in rate base for the accumulated costs of Seabrook (both units I and II), Wyman No. 4, Millstone No. 3, and Pilgrim No. 2). Reports and Orders of this commission indicate that: 1) Seabrook No. I is a nuclear generating plant that today is near or at completion and awaiting a license from the Nuclear Regulatory Commission; 2) Seabrook No. II was a nuclear generating plant which was partially built and then cancelled; 3) Wyman No. 4 is an oil generating unit that is currently operating and in PSNH's rate base; 4) Millstone No. 3 is a nuclear generating unit of which PSNH owns a minority share, that is currently operational, and that was first included in PSNH's rate base in PSNH's last rate case, DR 86-122; and 5) Pilgrim No. 2 is a cancelled nuclear generating station upon which construction was begun but which was cancelled prior to completion. Reflection of any of these plants in PSNH's rate base would include only PSNH's investment and not the investment of any co-owners.

The second part of issue b focuses on the amounts of the company's investment on specific dates. In response to this part of issue b, in these updated hearings parties presented information, to the best that could be determined, on PSNH's investment in Seabrook I at various dates. During the course of presentation of this data, it became clear that there are some discrete issue areas that make developing precise figures on PSNH's investment in Unit I more difficult than the court may have anticipated.

The source of the basic data that all parties relied upon is the information PSNH receives from the Seabrook project as to total cash expenditures made at the project. Those cash expenditures are broken down into the cost of procuring and constructing Seabrook Unit I, the cost of procuring and constructing Seabrook Unit II, indirects, common plant, nuclear fuel, and land. Common facilities are facilities that service both Unit I and Unit II. Indirects consist of both labor and material which are

defined as follows. Indirect labor is labor used at the construction site that does not actually work on the units. Indirect materials are materials utilized at the construction site that do not actually become a part of the Units.

PSNH witness Wiggett indicated that the PSNH investment amounts presented in his testimony reflect combining the entire amount of Seabrook Unit I construction procurement costs, an allocation of indirects, and 100% of the cost of common facilities. The consumer advocate witness relies on the same basic data, but adjusts the investment numbers downward for a change in the PSNH ownership of the Seabrook station, for the education center, and for the termination yard. The staff witness relies on the same data and makes adjustments for the same three reasons.

The commission finds there are six general areas of controversy regarding these numbers based on the record before it. In the commission's opinion, indirects and common facilities present problems of allocation between Unit I and Unit II. The factual circumstances and the contentions of various parties relating to the "educational center" and the "termination yard" also need to be addressed. Matching the dates of interest to the court to the investment data also present an issue as does PSNH's change of ownership from 50% to 35.56942%.

With regard to indirects, the record is not well developed on the methodology by which allocations were made between Unit I and Unit II. However, testimony of PSNH's witness indicates that the allocation to Unit I was more conservative than that advocated by an outside auditor hired by the Seabrook joint owners. Other witnesses for the staff and the consumer advocate accepted Mr. Wiggett's allocation and utilized it in developing their numbers. Thus, while the commission is concerned over the lack of a thorough record on the allocation mechanism, the commission finds that the allocation of indirects to Unit I is reasonable for the limited purpose at hand.

Each witness testifying on Seabrook Unit I investment included all the common plant at Seabrook Station as investment in Unit I. According to PSNH, 100% of the common plant should be applied to the Unit I investment. The witnesses for the staff and the consumer advocate utilized this presentation of numbers and data that PSNH had provided and thereby also applied all of common plant to Unit I. As discussed above, common plant in the context of this case is plant common that was designed and built to service both Unit I and Unit II. An example is the tunnel at the Seabrook facility to carry cooling system water that was designed and built with capacity sufficient to serve both Units I and II.

PSNH witness Wiggett indicated that the accounting for common facilities is in accordance with the FERC regulations and standards within the industry. However, upon review of the FERC Uniform System of Accounts Prescribed for Public Utilities and Licensees Subject to the Provisions of the Federal Power Act, 18 CFR part 101, there appears to be only one regulation dealing with common plant. That regulation, 18 CFR part 101, at 334; I FERC Statutes and Regulations ¶ 15,063, seems to address utility plant that is utilized for more than one utility service, (e.g. plant used for both service electric and gas), or plant that is used for both the relevant utility service and for non-utility services. With regard to such plant, the regulations

indicate that allocations of such plant should be made among the various uses. The regulation also discusses the expenses related to common utility plant and requires an allocation of those as well. Based on our reading of the FERC regulation on the system of accounts, which this commission has adopted,[4](121) the regulation does not directly address accounting for plant that is common between two electric facilities. However, with regard to common plant, the regulation clearly follows the general concept of a reasonable allocation between the uses of common plant.

At the specific times of interest to the court — the time frame when the commission allowed CWIP in rate base and the

effective date of the anti-CWIP statute — the joint owners were constructing both Unit I and Unit II. Based on that fact, and the lack of any other credible allocation between Unit I and Unit II, the commission finds it most reasonable to split the common plant in half between Unit I and Unit II for purposes of this docket.[5](122) However, the commission does not have in the record before it investment figures indicating the investment in common plant that PSNH included as part of Unit I. The commission deals with that data problem infra.

The consumer advocate and staff witnesses both reduced the PSNH recommended number on investment in Unit I by the cost of the education center located at Seabrook Station. PSNH included amounts in its investment costs that reflected its estimate of the investment in the center at the time of the data.

The education center is a center designed to provide education for the general public. The education provided, according to the Company witnesses, relates to Seabrook Station and nuclear power in general. The education center is currently in operation, and was allowed in rate base.

The commission finds that allocation of the education center to the Seabrook project is reasonable. The commission further finds it appropriate to allocate all of this item to the first unit that PSNH is expected to complete. Thus, allocating the entirety of the education center to Unit I is reasonable. PSNH's estimates of its actual invested amounts shall be utilized for this purpose.

The consumer advocate and staff witnesses both excluded the cost of the termination yard from the PSNH advocated numbers on investment in Unit I. PSNH included in its investment numbers costs that reflected its estimate of the investment in the termination yard at the time of the data. The termination yard is the main switching yard in the Seabrook Station. The plant there allows Seabrook owners to get Seabrook power, if and when any is produced, into the transmission grid. The plant provides the additional function providing additional needed transmission capacity from northern to southern New England. For the purpose of this proceeding, the commission, based on the record before it, finds it reasonable to allocate all of that termination yard to the Seabrook project and also finds it reasonable to allocate 100% of this plant to the first unit that PSNH anticipated completing: Unit I. As with the education center, the PSNH presentation reflects the actual investment in the termination yard at specific dates. Thus, the PSNH data shall be used for investment in the termination yard.

The Court specifically requested the company's investment in the Seabrook I reactor prior to

the date at which the commission first authorized inclusion of that investment in rate base. PSNH took the position that this request asks for the company's investment at the date of the issuance of the above referenced commission order authorizing CWIP in rate base. The staff, in response to that order, presented information on the investment included in rate base in that particular order, rather than the company's investment on the order's issuance date. The consumer advocate, in his request for findings, presents information on both. In addition, PSNH, responded to the evidence put in the record by the staff by placing into evidence data relating to investment included in the rate case that the order related to.

The commission finds that the words expressed in issue b request a finding on the company's investment on the date the commission issued its order first authorizing CWIP in rate base. However, reading issue b in context, it is also reasonable to conclude that the court may be interested in the investment that was authorized in the order. Thus, the commission makes findings in its schedule below that indicate the investment allowed in the order. Those numbers show PSNH's investment at April 30, 1977 — the date for the end of the test year utilized for that rate case. In addition, the schedule below will reflect findings on PSNH's investment at May 31, 1978, six days after the commission formally authorized inclusion of such investment in rate

Page 493

base by its Order No. 13,162 (May 25, 1978). The divergence of the six days is required due to the monthly nature of the data that PSNH has and the fact that May 31, 1978 is the closest day to the date that the Court seems to be interested in.

RSA 378:30-a became effective on May 7, 1979. All parties seem to agree that this order should find PSNH's investment in Unit I on this date. Due to the monthly nature of the PSNH investment data, there is no evidence on investment for that precise date. Thus, the schedule below reflects findings for investment on April 30, 1979 — seven days prior to the effective date of RSA 378:30-a.

In addition, the supreme court has asked for investment "thereafter". In response to that request, the commission has in its schedule below, developed investment totals on an annual basis. Throughout this period the commission has utilized the allocations discussed above.

The consumer advocate and staff presented testimony indicating that the numbers reflecting PSNH's investment in Seabrook I should be adjusted to reflect the eventual change in PSNH's ownership of Seabrook from 50% to 35.56942% after the enactment of RSA 378:30-a. In contrast, PSNH insists that the court asked for PSNH's investment and that subsequent action does not affect their investment in Seabrook in those earlier dates.

Uncontradicted evidence in the record indicates that PSNH engaged in transactions designed to reduce their ownership percentage in the Seabrook Unit I from 50% to 35.56942%. However, even at the time of those transactions, PSNH's cash investment did not decline. Instead, the change in PSNH's ownership was carried out by reducing PSNH's cash payments to the project in the time periods after the transaction took place. The commission agrees that if what the court wants is clearly PSNH's investment, the actual historical investment numbers should not be adjusted for a subsequent change in PSNH's ownership level. However, these historical investment numbers may or may not be the amount appropriate for consideration if the

commission attempts to develop a pre-RSA 378:30-a rate base for ratemaking purposes. Thus, the commission declines to make an adjustment in its findings to reduce the amounts of historical investment to reflect the investment that would have existed at a 35.56942% ownership level.[6](123)

Based on the foregoing discussion, the commission provides the schedule below of PSNH investment. The investment numbers are not complete and need to be supplemented by subtracting 50% of PSNH's common plant from them. To determine the amount of common plant, the commission directs all active parties to this proceeding to appear in an additional conference of the parties at 9:00 a.m. on October 16, 1987. PSNH shall attempt to provide the active parties in this proceeding with appropriate figures for 100% of common plant, including associated AFUDC, at all the dates listed below at least 24 hours before this conference. The commission would expect parties to report on whether they can agree on those numbers or whether further procedures need to be developed to create a record or an agreement on those numbers at 10:00 a.m. on October 16, 1987. The commission shall, as soon as possible, supplement this order with the information on common plant and then consider its task complete with regard to the supreme court September 2, 1987 Order.

The schedule of PSNH investment in Seabrook Unit I, pursuant to issue b and as discussed above, is as follows:

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

PSNH INVESTMENT IN UNIT I

Date	PSNH Investment in Unit I
04/30/77	$ 70,806,950 — (50% of common plant)
05/31/78	165,651,870 — (50% of common plant)
04/30/79	237,968,598 — (50% of common plant)
12/31/79	320,092,938 — (50% of common plant)
12/31/80	454,718,761 — (50% of common plant)
12/31/81	495,159,536 — (50% of common plant)
12/31/82	675,373,109 — (50% of common plant)
12/31/83	940,656,402 — (50% of common plant)
12/31/84	1,184,255,352 — (50% of common plant)
12/31/85	1,468,061,969 — (50% of common plant)
12/31/86	1,765,265,460 — (50% of common plant)
07/31/87	1,919,311,861 — (50% of common plant)

Our Order will issue accordingly.

CONCURRING OPINION OF COMMISSIONER LINDA G. BISSON

I concur with the foregoing opinion of the majority but for the following clarification. For purposes of this proceeding I agree that, in the fullest interpretation of the term "investment", the Seabrook I construction costs and related AFUDC at July 31, 1987 are $1,919,311,861. However, as PSNH's investments in the education center ($884,370) and in the termination yard ($6,995,909) have been included in the Company's rate base for several years, the investment schedule should be adjusted to reflect these inclusions. In my opinion, the following schedule more fully demonstrates the Company's investment levels.

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

Adjustment for Assets

Subsequently Placed in Rate Base	Adjusted			
Date	Investment	Ed Ctr.	Term Yard	Investment
04/30/77	70,806,950	136,004	213,333	70,457,613*
05/31/78	165,651,870	890,433	956,318	163,805,119*
04/30/79	237,968,598	1,063,924	659,723	236,244,951*
12/31/79	320,092,938	1,124,722	4,857,386	314,110,830*
12/31/80	454,718,761	1,146,217	7,252,975	446,319,569*
12/31/81	495,159,536	1,148,573	7,252,975	486,757,988*
12/31/82	675,373,109	1,161,072	6,995,909	667,216,128*
12/31/83	940,656,402	884,370	6,995,909	932,776,123*
12/31/84	1,184,255,352	884,370	6,995,909	1,176,375,073*
12/31/85	1,468,061,969	884,370	6,995,909	1,460,181,690*
12/31/86	1,765,265,460	884,370	6,995,909	1,757,385,181*
07/31/87	1,919,311,861	884,370	6,995,909	1,911,431,582*

---------- *Less 50% Common Plant

SUPPLEMENTAL ORDER

Upon consideration of the Report Regarding Findings Pursuant to September 2, 1987 supreme court order, which is incorporated herein by reference; it is

ORDERED, that the revised attachment 1 and attachment 2 to Exhibit 19 submitted by the consumer advocate on September 24, 1987 shall be marked as Exhibit 19A in this proceeding; and it is

FURTHER ORDERED, that Exhibit 35 shall be marked in this proceeding and it shall consist of the PSNH responses to

Page 495

consumer advocate data requests specified below:

PSNH Response to OCA-137 (4 pages)
PSNH Response to OCA-138 (3 pages)
PSNH Response to OCA-139 (4 pages)
PSNH Response to OCA-140 (16 pages)
PSNH Response to OCA-141 (1 page)
PSNH Response to OCA-142 (1 page)
PSNH Response to OCA-143 (1 page)
PSNH Response to OCA-144 (1 page);

and it is

FURTHER ORDERED, that the eight page response to Commissioner Bisson's request, including the cover letter dated September 22, 1987 from Susan B. Kullberg, shall be marked as Exhibit 36; and it is

FURTHER ORDERED, that this Order shall be supplemented with regard to data on common plant as detailed in the foregoing Report; and it is

FURTHER ORDERED, that this commission's response to the court's order of September 2, 1987 (as discussed at page 3 of the court's order) is not complete until the issuance of that supplemental order.

By order of the Public Utilities Commission of New Hampshire this fourteenth day of October, 1987.

FOOTNOTES

[1]This approximate calculation is developed by taking the 52.08% in the testimony and multiplying it by (1.00-.34). The .34 is the federal tax rate.

[2]The commission also notes that PSNH has not made a filing for a permanent rate increase. Uncontradicted testimony of staff witness Voll indicates that pursuit of rate relief based upon traditional criteria would not result in a "meaningful increase" in rates. The commission finds that testimony and Dr. Voll's analysis reasonable. Thus, PSNH has asked for emergency rates that it clearly would not receive under traditional ratemaking.

[3]PSNH, the consumer advocate and the staff all indicate through testimony or pleadings a position that agrees with this finding.

[4]N.H. Admin. Rules, Puc 307.04.

[5]The commission makes no finding here regarding the appropriate method to allocate plant for purposes of rate base once one plant of a two plant project is cancelled and the other is operating.

[6]Adjusting the historical investment to investment that would have existed at the 35.56942% level requires the investment to be multiplied by 35.56942./50.0

==========

NH.PUC*10/16/87*[60373]*72 NH PUC 496*New Hampshire Electric Cooperative, Inc.

[Go to End of 60373]

72 NH PUC 496

Re New Hampshire Electric Cooperative, Inc.

Additional applicant: Exeter and Hampton Electric Company

DE 87-194
Order No. 18,874

New Hampshire Public Utilities Commission

October 16, 1987

ORDER providing for an exchange of customers between two electric utilities.

SERVICE, § 251 — Substitution of facilities — Exchange of customers — Inconvenient boundary lines.

[N.H.] Where a small new real estate development was being constructed in a location that

was bisected by the boundary line between two electric service territories, it was found to be in the public interest for the development to be served by only one utility, and therefore, one utility yielded its right to serve the development in exchange for the transfer of a like number of customers to its service from the utility selected to serve the development.

By the COMMISSION:

ORDER

WHEREAS, on October 9, 1987, the New Hampshire Electric Cooperative, Inc. (the Cooperative) and Exeter and Hampton Electric Company (Exeter and Hampton) filed with this commission its petition for authority to change service territories in a limited portion of the towns of Danville, Kingston, and Brentwood, New Hampshire; and

WHEREAS, the change in service areas is being necessitated due to a new development of twelve units, called Twin Bridges, being built which consists of six units located in each of the two adjoining

Page 496

franchise areas as the existing franchise boundary line divides the development in half; and

WHEREAS, there is agreement among all three parties, i.e., the Cooperative, Exeter and Hampton, and the developer, Mr. Frank Caparco, that the orderly development of the region would require that only one electric company serve the total development; and

WHEREAS, all participants agree that the Cooperative should serve the Twin Bridges development, in Danville; and

WHEREAS, in exchange for the proposed six customers being given up by Exeter and Hampton, the Cooperative has agreed to give up to Exeter and Hampton six existing customers, as yet unidentified, on South Road in the towns of Brentwood and Kingston; and

WHEREAS, Exeter and Hampton is willing to build the necessary tie line to provide service to the six existing Cooperative customers; and

WHEREAS, the Cooperative is willing to build the necessary line extension, under the standard terms and conditions provided for in its tariff, to serve Twin Bridges development; and

WHEREAS, such an exchange is deemed to be reasonable and in the public good; it is

ORDERED, that, pursuant to the provisions of RSA 374:22 and RSA 374:26, the Cooperative is hereby given temporary authority to immediately serve the Twin Bridges development subject to a public hearing on the full petition addressing both the development and the exchange of six existing Cooperative customers on South Road; and it is

FURTHER ORDERED, that, a hearing be held on the issue of permanent authority, pursuant to, inter alia, RSA Chapter 365, RSA 374:22 and RSA 374:26, before the New Hampshire Public Utilities Commission at its Concord offices, 8 Old Suncook Road, Building #1 in said state at ten o'clock in the forenoon on the ninth day of February, 1988; and it is

FURTHER ORDERED, that, pursuant to N.H. Admin. Rules puc 203.01, the petitioners notify all persons desiring to be heard to appear at said hearing by causing a copy of this order to be published once in a newspaper having general circulation in that portion of the state in which the exchange is to be conducted, such publication to be no later than the twelfth day of January, 1988, said publication to be docu- mented by affidavit filed with this Commission on or before the ninth day of February, 1988; and it is

FURTHER ORDERED, that, the Cooperative directly notify the six existing customers on South Road, and document such effort in an affidavit to be filed with this office at least fourteen days before said hearing.

By order of the Public Utilities Commission of New Hampshire this sixteenth day of October, 1987

==========

NH.PUC*10/16/87*[60374]*72 NH PUC 497*Manchester Water Works

[Go to End of 60374]

72 NH PUC 497

Re Manchester Water Works

DE 87-179
Order No. 18,875

New Hampshire Public Utilities Commission

October 16, 1987

ORDER authorizing an extension of service by a municipal water utility.

SERVICE, § 204 — Extensions — Municipal water utility — Extraterritorial service.

[N.H.] Based on a finding of public need, a municipal water utility was authorized to extend its service into another town, unless a member of the public requested a hearing on the matter.

By the COMMISSION:

ORDER

Page 497

WHEREAS, Manchester Water Works, a water public utility operating under the jurisdiction of this Commission in areas served outside the city of Manchester, by a petition filed September 23, 1987, 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, after investigation and consideration, this Commission is satisfied that the granting of the petition will be for the public good; and

WHEREAS, the Board of Selectmen, Town of Hooksett, has stated that it is in accord with the petition; 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 October 30, 1987; 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 October 23, 1987 and designated in an affidavit to be made on a copy of this Order and filed with this office on or before November 5, 1987; 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 center line of Londonderry Turnpike (28 Bypass), Hooksett, New Hampshire, at the northerly limits of the existing franchise area as approved under PUC Order No. 18,188, dated March 25, 1986, in docket DE 86-73, 71 NH PUC 195, thence northerly 2,000 feet more or less along Londonderry Turnpike to a point 250 feet more or less north of the intersection of Smyth Road, for the purpose of servicing all existing lots abutting the proposed extension.

and it is

FURTHER ORDERED, that such authority shall be effective on November 5, 1987 unless a request for hearing is filed with 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 sixteenth day of October, 1987.

==========

NH.PUC*10/16/87*[60375]*72 NH PUC 498*Manchester Water Works

[Go to End of 60375]

72 NH PUC 498

Re Manchester Water Works

DE 87-180
Order No. 18,876

New Hampshire Public Utilities Commission

October 16, 1987

ORDER authorizing expanded extraterritorial service by a municipal water utility.

SERVICE, § 204 — Extensions — Municipal water utility — Extraterritorial service.

[N.H.] A municipal water utility was authorized to proceed with its plans to extend service into another town, unless a hearing was requested on the matter.

By the COMMISSION:

Page 498

ORDER

WHEREAS, Manchester Water Works, a water public utility operating under the jurisdiction of this Commission in areas served outside the City of Manchester, by a petition filed September 23, 1987, 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 October 30, 1987; 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 October 23, 1987 and designated in an affidavit to be made on copy of this Order and filed with this office on or before November 5, 1987; 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 center line of Hackett Hill Road, Hooksett, New Hampshire, at the northerly limits of the existing franchise area as approved under PUC Order No. 18,189 in docket DE 86-74, 71 NH PUC 197, thence northerly 415 feet more or less along Hackett Hill Road to the northerly limits of Lot 18, Map 28 of the Tax Maps of the town of Hooksett, for the purpose of providing service to all properties presently abutting the proposed extension.

and it is

FURTHER ORDERED, that such authority shall be effective on November 5, 1987 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 sixteenth day of October, 1987.

==========

NH.PUC*10/16/87*[60376]*72 NH PUC 499*Manchester Water Works

[Go to End of 60376]

72 NH PUC 499

Re Manchester Water Works

DE 87-181
Order No. 18,877

New Hampshire Public Utilities Commission

October 16, 1987

ORDER allowing a municipal water utility to extend service into another town.

SERVICE, § 204 — Extensions — Municipal water utility — Extraterritorial service.

[N.H.] A municipal water utility was allowed to further extend its mains and service into another town, where the extension was deemed to be in the public interest.

By the COMMISSION:

Page 499

ORDER

WHEREAS, Manchester Water Works, a water public utility operating under the jurisdiction of this Commission in areas served outside the City of Manchester, by a petition filed September

23, 1987, 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 October 30, 1987; 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 October 23, 1987 and designated in an affidavit to be made on a copy of this Order and filed with this office on or before November 5, 1987; 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 file in the Commission offices:

Beginning at a point on the center line of Maurais Street, Hooksett, New Hampshire, at the easterly limit of the existing franchise area as approved under PUC Order No. 11,904, dated June 13, 1975 in docket DE 75-151, 60 NH PUC 439, thence easterly 1,600 feet along the proposed extension of Maurais Street, for the purpose of providing service to all properties abutting the proposed 1,600 foot extension.

and it is

FURTHER ORDERED, that such authority shall be effective on November 5, 1987 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 sixteenth day of October, 1987.

==========

NH.PUC*10/16/87*[60378]*72 NH PUC 500*Manchester Water Works

[Go to End of 60378]

DE 87-169
Order No. 18,878

New Hampshire Public Utilities Commission

October 16, 1987

PETITION by municipal water utility for authority to extend service into another town; granted.

SERVICE, § 204 — Extensions — Municipal water utility — Extraterritorial service.

[N.H.] Where a town had no objection to obtaining water service from a municipal utility in another town, the municipal utility was allowed to extend its service into the town.

By the COMMISSION:

Page 500

ORDER

WHEREAS, Manchester Water Works, a water public utility operating under the jurisdiction of this Commission in areas served outside the city of Manchester, by a petition filed September 15, 1987, seeks authority under RSA 374:22 and 26 as amended, to further extend its mains and service in the town of Bedford; and

WHEREAS, no other water utility has franchise rights in the areas 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 Selectmen of the Town of Bedford have stated that they are in accord with this petition; 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 October 30, 1987; 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 be no later than October 23, 1987 and designated in an affidavit to be made on a copy of this Order and filed with this office on or before November 5, 1987; and it is

FURTHER ORDERED, NISI, that Manchester Water Works, be authorized pursuant to RSA 374:Z2, to extend its mains and service in the town of Bedford in an area herein described, and as shown on a map on file in the Commission offices:

A block area bound on the north by the southerly limits of the existing service area as approved under Public Utilities Commission Order No. 16,272, dated March 11, 1983 in docket

DE 82-267, 68 NH PUC 127; on the east by the Manchester-Bedford town line, on the south by the southerly property line of Lot 4, Map 35 of the "Tax Maps" of the town of Bedford extending westerly to the F.E. Everett Turnpike; and on the west by the F.E. Everett Turnpike.

and it is

FURTHER ORDERED, that such authority shall be effective on November 5, 1987 unless a request for hearing is filed with 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 sixteenth day of October, 1987.

==========

NH.PUC*10/21/87*[60379]*72 NH PUC 501*Fuel Adjustment Clause

[Go to End of 60379]

72 NH PUC 501

Re Fuel Adjustment Clause

DR 87-172
Supplemental Order No. 18,879

New Hampshire Public Utilities Commission

October 21, 1987

ORDER permitting a fuel adjustment surcharge to take effect without hearing.

AUTOMATIC ADJUSTMENT CLAUSES, § 60 — Procedure — Routinely scheduled review hearings.

[N.H.] The commission does not routinely schedule reviews of monthly fuel adjustment clauses, and will schedule hearings on such only after receipt of a specific request for a hearing.

Page 501

By the COMMISSION:

SUPPLEMENTAL ORDER

WHEREAS, the Commission, in correspondence dated March 2, 1983, notified Connecticut Valley Electric Company, Inc., Municipal Electric Department of Wolfeboro, Woodsville Power and Light Department, and Littleton Water & Light Department that FAC hearings will not be automatically scheduled unless requested by said utilities maintaining a monthly FAC; and

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

ORDERED, that 166th Revised Page 6 of the Littleton Water and Light Department tariff, NHPUC No. 1 — Electricity, providing for a fuel surcharge of $.54 per 100 KWH for the month of October, 1987, be, and hereby is, permitted to become effective October 1, 1987.

By Order of the Public Utilities Commission of New Hampshire this twenty-first day of October, 1987.

==========

NH.PUC*10/21/87*[60380]*72 NH PUC 502*Public Service Company of New Hampshire

[Go to End of 60380]

72 NH PUC 502

Re Public Service Company of New Hampshire

DR 87-151
Seventh Supplemental Order No. 18,880

New Hampshire Public Utilities Commission

October 21, 1987

MOTION to compel an electric utility to respond to discovery requests; granted in part and denied in part.

---

1. PROCEDURE, § 16 — Discovery — Data requests — Scope of response.

[N.H.] When a discovery request is made of a party, that party is charged with providing answers based on its own records and materials as well as on such knowledge or materials in the possession of the party's agents, employees, or legal counsel. p. 504.

2. PROCEDURE, § 17 — Discovery — Commission powers — Power to compel response.

[N.H.] The commission has broad powers with respect to investigations and discovery motions, including the authority to compel a utility to provide discovery responses beyond that required by traditional discovery rules. p. 504.

3. PROCEDURE, § 16 — Discovery — Data requests — Frequency of figures.

[N.H.] Where an electric utility had already supplied information on its actual and adjusted investments in a nuclear power plant project, reflecting figures as of two separate dates, a data request seeking to compel the utility to provide the same information on a monthly basis was denied, as no need for monthly figures was seen and as the party seeking the data could have developed the information itself. p. 505.

4. PROCEDURE, § 16 — Discovery — Data requests — Maintained records.

[N.H.] Although an electric utility was not required to submit additional information on its

stocks and bonds for which it had not maintained records, the utility was directed to compile, from public information sources, data on the price of its debentures. p. 505.

5. PROCEDURE, § 16 — Discovery — Data requests — Development of new information.

[N.H.] Although a discovery request made to an electric utility had specified the provision of workpapers, the commission found that the request was actually one for the development of additional information, not the provision of workpapers, and because the petitioner could not explain the importance of the data or why the petitioner could not develop the information itself, the commission denied the discovery request. p. 505.

6. PROCEDURE, § 16 — Discovery — Data requests — clarification — Motion of compel.

[N.H.] It is inappropriate for a petitioner to clarify a discovery request in a motion to compel a response to the request. p. 505.

Page 502

7. PROCEDURE, § 16 — Discovery — Data requests — Projections and estimates.

[N.H.] Where an electric utility is requested to provide information on the sale of parts and components of a nuclear power plant project, it is not necessary for the utility to also include projections about those parts that might become available for sale at some time in the future. p. 506.

8. PROCEDURE, § 16 — Discovery — Data requests — Scope of request.

[N.H.] A data request made to an electric utility was found to be overly broad and unnecessary where it sought all studies, analyses, and reports, including detailed narratives, for all future plans being considered by the utility, including those plans not directly related to the case at hand. p. 506.

9. PROCEDURE, § 16 — Discovery — Data requests — Factors.

[N.H.] The commission denied a data request made by a petitioner to an electric utility, noting that the petitioner could have developed the information on its own, that the request would have required the utility to undertake a study that did not yet exist, and that the subject of the request was an issue that had already been decided against the petitioner previously. p. 507.

10. PROCEDURE, § 16 — Discovery — Data requests — Scope of request.

[N.H.] A data request may be denied on the grounds that it is so broad as to make a response impossible; at issue in the instant data request was a copy of all investment research, analysis, and reports for an electric utility for a 17-year period. p. 507.

11. PROCEDURE, § 16 — Discovery — Data requests — Previously provided information.

[N.H.] Where a utility had already provided certain requested information in response to a discovery motion, it was not required to provide the information anew in response to another discovery request in the same case. p. 507.

12. PROCEDURE, § 16 — Discovery — Data requests — Subjects not at issue.

[N.H.] Where the commission had decided not to address the issue of prudency of a nuclear

plant project in an electric utility's debt restructuring proceeding, data requests relating to prudency were denied. p. 507.

13. PROCEDURE, § 16 — Discovery — Data requests — Customer response to rate changes.

[N.H.] The effect of a rate increase or a change in rate design on an electric utility's customer level cannot be considered to be proprietary information that can be withheld from the public. p. 508.

14. PROCEDURE, § 16 — Discovery — Data requests — Confidentiality of information — Standards.

[N.H.] When, following a data request, a utility seeks to withhold the desired information as being proprietary, confidential, or privileged, the utility must indicate (1) whether the requested data is traditionally considered confidential; (2) if the data may be found in public records anywhere; (3) what specific injury public disclosure of the data would cause the utility; (4) the extent of any anticipated harm; (5) the length of time for which protective status is sought; and (6) how nondisclosure would outweigh the public interest in disclosure. p. 508.

15. PROCEDURE, § 16 — Discovery — Data requests — Publicly available information.

[N.H.] When information requested of a utility in a discovery motion is available publicly, the utility will not be required to reproduce that information. p. 508.

By the COMMISSION:

REPORT REGARDING CONSUMER ADVOCATE'S MOTION TO COMPEL

On September 18, 1987 the consumer advocate filed a motion to compel relating to PSNH's responses or non-responses to the following eighteen (18) of his data requests: OCA-6, OCA-7, OCA-8, OCA-27,

OCA-33, OCA-67, OCA-87, OCA-91, OCA-93, OCA-95, OCA-97, OCA-99, OCA100, OCA-103, OCA-115, OCA-123, OCA124, and OCA-135. On September 21, 1987, PSNH responded to this motion. This Report and Order discusses general considerations applied to all the disputed data requests, considers each of the data requests, grants the motion in part and denies the motion in part.

[1] Compliance with discovery in traditional legal proceedings involves full disclosure of all requested information which the party has at the time of the discovery request. See e.g., Kearsarge Computer, Inc. v. Acme Staple Co., 116 N.H. 705, 707 (1976). When providing such disclosure to a discovery request, a party has a duty to find out and provide what is in his own records and what is within the knowledge of its agents and employees concerning the matters inquired into. Id. Material in possession of a party's attorneys or agents are generally considered under the control of the party and thus are in no way exempted from discovery. See: Annot. 47 A.L.R. 3d 676 (1973).

[2] This commission has broad statutory authority specifically providing it with broad

powers of securing information in investigations and rate proceedings. For example, the commission has specific statutory powers to compel production of documents and to require answers to specific questions. See e.g., §§ N.H. Rev. Stat. Ann. §§365:6, 365:14, 365:15 and 374:18. It also has broad investigatory authority with respect to utility regulation and the powers necessary to carry out such authority. See e.g., §§ N.H. Rev. Stat. Ann. 365:4, 365:5. The broad powers of utility regulatory commissions give such commissions the ability to require discovery responses from utilities beyond that required by traditional discovery rules. See: III FERC Statutes and Regulations 30, 731, at 30, 553-54. See generally: Benkin, I., "More Ado About Prehearing Discovery at FERC", 6 Energy Law Journal 1, 23 (1985).

With regard to the administrative case at hand, PSNH has a duty to respond to data requests from the consumer advocate and other intervenors in a manner that, at a minimum, is consistent with discovery in traditional legal proceedings as described above. To the extent the consumer advocate's and other parties, requests go beyond that duty, the Commission will, upon a motion to compel, require responses to data requests that are designed to discover relevant data, that require relatively little effort to comply with, and where PSNH is clearly the party in the best position to undertake the effort to gather the information. In other situations the Commission will deal with motions to compel on a case by case basis, balancing the necessary effort by PSNH, the relevance of the material, the potential of the requesting party to undertake the effort of preparing the requested information, and any other relevant criteria. The commission believes it is appropriate for the moving party to make a reasonable effort to explain why PSNH should provide a response when a response goes beyond the response required in traditional litigation as discussed above. The commission follows these principles in deciding this motion with regard to individual data requests below.

Data request no. OCA-6 asks for certain material relating to Harrison Attachment D, an attachment entitled "PSNH Investment in Seabrook". In this data request, the consumer advocate asked for a schedule showing "actual" and "adjusted" amounts by month since the Seabrook project began, showing (a) cash and (b) AFUDC for (1) Seabrook Unit I, (2) Seabrook Unit II and (3) common facilities. Data request OCA-7 builds on OCA-6 by requesting the actual AFUDC rate for each month under the schedule requested in OCA-6. Data request OCA-8 builds upon data requests OCA-6 and OCA-7 by requesting updates to the OCA-6 and OCA-7 responses to date. PSNH takes the position that responding to OCA-6, OCA-7 and OCA-8 would require PSNH to perform a study to develop the data that the data requests ask for and declines to develop the requested information.

Page 504

[3] Attachment D to Mr. Harrison's testimony shows actual and adjusted amounts for PSNH's investment at two dates: 10/31/86 and 4/30/85. The attachment also shows the breakdown between cash and AFUDC in the investment on those dates. It is unclear to the commission why it is important to develop such data on a monthly basis. Furthermore, it is unclear why the office of the consumer advocate cannot develop such information itself. Thus, the commission declines to compel PSNH to respond to OCA-6, OCA-7 and OCA-8.

OCA-27 asks for a schedule showing the daily price and yield of each of PSNH's securities, bonds, preferred and common stock from January 1, 1987 to date. PSNH takes the position that it

has not maintained this information except with respect to its 17.5% debentures due 2004. PSNH declines to provide even the information that it has because that information is available from public sources.

[4] The Commission declines to require PSNH to provide information on its securities bonds and preferred and common stock that it has not maintained records on. The consumer advocate notes that Mr. Harrison's testimony discusses the subject of the price of debentures. Since PSNH has already compiled a tracking of the price of this bond, and since it is publicly available, it is presumably not publicly available in one concise place (as opposed to in each and every edition of the Wall Street Journal or another daily publication). PSNH's provision of this compilation of publicly available information would involve far fewer resources than would developing a separate compilation by the consumer advocate. Thus, the commission orders PSNH to respond to OCA-27 with regard to PSNH's 17.5% debentures due 2004 and shall not require any further response by PSNH to said data request.

In OCA-33, the consumer advocate asked for a schedule showing the maximum amount of CWIP that could have been included in rate base each year, 1976 to date, the rate of return allowed by the NHPUC in each year and the resulting revenue requirement of such additions to rate base each year if the assumptions on Harrison Attachment D had been implemented. It also states at the bottom: provide workpapers. Despite this data request, the consumer advocate in his motion states that "we are requesting the workpapers and specific assumptions made" in Harrison Attachment D. PSNH, in its response to that data request, indicated that the request asked them to perform a study to certain status specifications that they declined to produce.

[5] The commission finds that data requests OCA-33 clearly requests development of additional information and not workpapers. The consumer advocate has not explained the importance of the data or why his office cannot prepare it. The commission finds a lack of grounds to compel PSNH to develop the information requested. Thus, the commission denies the consumer advocate's request to compel a response to OCA-33. The commission notes that it cannot find that the data request asked for the workpapers or assumptions made for Harrison Attachment D and further notes that the response to staff data requests set 1, request no. 10 provides the workpapers for that attachment.

In OCA-67, the consumer advocate requested an answer to "who `forced' PSNH to support Seabrook construction in light of the impact of RSA 378:30a would have on the company". The data request provides a specific reference to the prefiled testimony of PSNH witness Williamson. The consumer advocate, in his argument for compelling the response, first indicates that his reference to the Williamson testimony should have been to page 5, lines 11 through 17, rather than page 5, lines 11 through 15. The consumer advocate further argues that the answer was not responsive to the question. PSNH asserts that the answer was responsive (even to the question as expanded in the motion), that the question misconstrues Williamson's testimony, and is argumentative.

[6] The commission finds that it is inappropriate to clarify a data request such as OCA-67 for the first time in a motion to

compel. Furthermore, the commission finds that the referenced testimony refers to PSNH being forced to rely on external financing. It does not state that PSNH was forced to continue with Seabrook. Thus, the commission finds the PSNH position reasonable and shall not compel PSNH to respond further to this data request.

[7] In data request OCA-87, the consumer advocate provided the following request:

Has the company proceeded with its investment and recovery program regarding the sale of Seabrook Unit II components? Provide a schedule of (1) all items that were available for sale, (2) the items sold, (3) original cost of each item and (4) proceeds from sale of each item.

PSNH responded to this request by indicating what actions had been taken with regard to sale of Unit II parts and provided an inventory of Unit II items. It further indicated that no sales had been made and indicated that an important part of the process was arranging removal of liens against the property. In the response to the motion to compel, PSNH indicated that it would check if additional items exist and if so, will supply them. The commission finds it reasonable to supply whatever additional information that was requested that may not have been responded to in the initial data request. PSNH should have provided such material initially. The commission is not aware of the relevancy or value of additional work by PSNH to detail additional information on the items that may at some time become available for sale from Unit II. Thus, the commission declines to compel PSNH to develop additional information on items potentially for sale from Unit II beyond that data that is already in existence at PSNH.

In data request OCA-91, the consumer advocate asked PSNH to provide pro forma net operating income, rate base cost of capital schedules and revenue deficiency computation utilizing the computations adopted by the NHPUC in DR 86-122 for three scenarios: 1. addition of $464.5 million to rate base, 2. addition of PSNH's entire investment in Seabrook I to rate base, and 3. calculation of the rate of return on equity that would be necessary to produce an additional $70.98 million in revenues on top of that produced by DR 86-122 rates. PSNH declined to produce the multiple calculations and computations and schedules. The commission is not aware of any reason why the consumer advocate's office could not have developed such calculations for itself and thus declines to order PSNH to comply with data request OCA-91.

Data request OCA-92 requested an update of income statements, rate base, cost of capital and computation of revenue deficiency as developed by the NHPUC in docket DR 86-122 making certain specified changes. PSNH declined to respond to this data request on the grounds that the material did not exist. The commission declines to compel PSNH to make these calculations, for it is unaware of why such calculations could not be made by the consumer advocate's office.

[8] Data request no. OCA-93 asks for any and all studies, analyses and reports prepared by PSNH concerning alternative steps it can or will take. The request went on to state that the information should be in narrative form with monthly and annual financial schedules, including workpapers. It also asks that for each scenario please provide a schedule deriving working capital. This request, on its face, seems to ask for all documents related to all plans PSNH has for the future and to ask for a narrative and specific schedules to go with each plan. While parts of PSNH's planning for the future are relevant to this case, the commission cannot find that "any and all studies, analysis and report prepared by PSNH concerning alternative steps it can or will

take" to be reasonably calculated and limited to the finding of relevant evidence. In addition, the information it has asked for to be in narrative form with certain specified schedules which are not necessarily in existence for every type of plan PSNH may

have. Thus, the commission declines to order PSNH to respond to this data request.

[9] In OCA-95, the consumer advocate requested PSNH to provide a schedule detailing the amount of revenue received from customers each year, 1976 to date, as a result of including the long term debt associated with Seabrook construction and the capital structure and the rate of return calculations approved by the NHPUC. PSNH responded by stating that the request asked PSNH to perform a study to certain stated specifications and that the study does not presently exist. PSNH also indicated that the request seemed to relate to an issue which the commission had determined adversely to the consumer advocate on three occasions, most recently in DR 86-122. The commission is not aware of any reason why this type of material can not be developed by the consumer advocate or personnel under his control. On this basis, the commission declines to compel PSNH to respond to OCA-95.

[10] Data request OCA-97 asks for a copy of "all investment research, information analysis and reports prepared by or for the company or in the possession of the company or any witness on behalf of the company 1970 to date". PSNH responded that the request is so broad that response is impossible. The commission also finds the request so broad that the response is impossible. Thus, the commission declines to compel a response to data request OCA-97.

[11] In data request OCA-99, the consumer advocate asks for the impacts on peak demand, megawatt hour retail sales, industrial and commercial self generation and/or cogeneration and conservation caused by various levels of rate increases. Similarly, in OCA-100, the consumer advocate asked for a copy of any and all studies performed by or for PSNH to deal with the consequences of reduced load and sales associated with increased rates. PSNH objected to OCA-99 on the ground that it asked PSNH to perform a study which did not exist, and, furthermore requests materials that do not seek explanation of testimony or materials submitted by PSNH in this case. With regard to OCA-99, the commission finds it inappropriate to order PSNH to provide this study for the consumer advocate. On the other hand, OCA-100 while comprehensive, is not unreasonably broad and asks for existing information. Thus, the commission orders PSNH to comply with the consumer advocate data request OCA-100. To the extent PSNH desires to withhold information or seek a protective order for materials based on privilege, it should appropriately so indicate. To the extent such information has been provided to the parties in this case in response to other data requests, it need not be provided again but instead may merely be referenced.

In data request OCA-103, the consumer advocate asked for a copy of any and all studies prepared by or for the company preparing the alternatives of continuing construction with Seabrook Unit I with discontinuing construction of Seabrook Unit I. PSNH objected to this request and declined to answer it on the grounds that the materials are not relevant to any material issue in this case and are not reasonably calculated to lead to discovery of relevant evidence.

[12] The material requested in OCA-103 is clearly relevant to PSNH's Seabrook analysis. PSNH has sought to introduce evidence in this case on the prudence of Seabrook via the testimony of Mr. Harrison. It should not at the same time withhold discovery on that item. The commission allowed Mr. Harrison to testify regarding his opinion on that subject, but it ruled that it will not consider the prudency of Seabrook in this case. As a result of the commission's ruling the commission will not now order PSNH to comply with this data request. However, at the time the data request was proffered and responded to, PSNH had no right whatsoever to deny the consumer advocate a response. Thus, it is because of these events where the commission, primarily on its own initiative, excluded the prudence of PSNH's Seabrook investment from the case, that the commission shall not

Page 507

compel the consumer advocate's motion on this particular data request.

In data request OCA-115, the consumer advocate requests a copy of any and all reports, studies, letters, etc., prepared by or for PSNH, or in the possession of PSNH, regarding Mr. Cicchetti's testimony at page 9, lines 3 through 13. The request further requests that PSNH identify the whole towns, counties, industrial customers and hospitals referred to on page 9, lines 6 through 9 and provide a copy of the credible threats received from each. PSNH responded by indicating that the whole towns and counties were referred to on page 9 lines 6 through 9 and are identified therein. PSNH declined to identify the industrial customers and hospitals due to concerns over the confidentiality desired by those customers, the effect upon the competitive position of PSNH and/or the customer, and requests for confidentiality by said customers. PSNH's response seems to indicate that the reasons cited as to why the information would not be provided constituted sufficient evidence of "credible" threats of customers leaving the PSNH system.

[13, 14] The commission finds that the potential customer loss caused by a revenue increase and/or particular rate designs under which a rate increase is provided make the issue of customer loss relevant. It seems that PSNH is attempting to claim that this information is proprietary business information. The commission shall not allow blanket withholding of all such information on customer loss and plans related thereto. PSNH shall, within five days of this order either provide all requested information or, in the alternative, to the extent the company desires protection, the company shall identify each and every individual item that it desires to protect. With respect to any item that the company requests protective treatment, the company shall indicate: 1) whether the information is customarily confidential and not otherwise publicly available; 2) what specified injury or liability the public disclosure of the information will cause and how the injury or liability would be caused; 3) the nature and extent of the anticipated harm (quantified to the maximum extent practicable); 4) the length of time for which nondisclosure is sought and the rationale therefore; and 5) how nondisclosure outweighs the public benefit of disclosure.

With respect to data requests OCA-123 and OCA-124, it seems from the PSNH response to the motion that the consumer advocate now has responses to those data requests. Thus, the commission shall take no action on those data requests unless parties ask for additional action.

Data request OCA-135 requests copies of testimony, Wisconsin PSC orders, decisions and reports, publications, speeches and other public testimony and comments of PSNH witness Cicchetti relating to nine specified areas. PSNH declined to reply with the request because it is time consuming and work intensive. In addition, PSNH argues that it is doubtful that the material would be of assistance to the consumer advocate and that the effort therefore would be wasteful.

[15] The material requested is unquestionably relevant to the proceeding at hand and to Mr. Cicchetti's testimony. However, most, if not all, of the material requested is also publicly available. The commission finds that PSNH must identify any such material that is not included in the vitae attached to Dr. Cicchetti's testimony. PSNH may voluntarily provide such information on a voluntary basis to facilitate the regulatory process. However, the commission declines to order PSNH to copy such a large quantity of publicly available materials. To the extent Dr. Cicchetti's vitae does not include all the material listed in OCA-135 (such as Wisconsin PSC orders) and the information is available to PSNH and/or Dr. Cicchetti, PSNH shall identify such materials. To the extent the requested materials are not reasonably publicly available in some form, PSNH shall provide the consumer advocate with a copy of such materials. Thus, the commission orders PSNH to comply with data request OCA-135 to the extent stated above.

Our order will issue accordingly.

SUPPLEMENTAL ORDER

Upon consideration of the foregoing REPORT REGARDING CONSUMER ADVOCATE'S MOTION TO COMPEL, which is incorporated herein by reference, it is

ORDERED, that the consumer advocate's motion to compel is granted with regard to data requests OCA-27, OCA-100, OCA-115 and OCA-135 to the extent indicated in the foregoing report; and it is

FURTHER ORDERED, that the consumer advocate's motion to compel is denied, except to the extent granted above.

By order of the Public Utilities Commission of New Hampshire this twenty-first day of October, 1987.

==========

NH.PUC*10/21/87*[60381]*72 NH PUC 509*Public Service Company of New Hampshire

[Go to End of 60381]

72 NH PUC 509

Re Public Service Company of New Hampshire

DR 87-151
Eighth Supplemental Order No. 18,881

New Hampshire Public Utilities Commission

October 21, 1987

ORDER compelling answers to data requests on an electric utility's possible bankruptcy plans.

PROCEDURE, § 16 — Discovery — Bankruptcy plans — Privileged documents.

[N.H.] As part of an emergency rate increase proceeding, the commission directed an electric utility to respond to discovery requests submitted by other parties, even though the discovery requests related to the utility's contingency plans in case it filed for bankruptcy and were not directly related to the emergency rate petition at hand; privileged documents were exempted from the discovery order as long as the utility at least revealed their existence and identified their authors and dates.

---

i. PROCEDURE, § 16 — Discovery — Bankruptcy plans — Subjects not at issue.

[N.H.] Statement, in dissenting opinion, that an electric utility should not have been compelled to reply to discovery requests relating to possible bankruptcy plans when bankruptcy was not an issue involved in the instant proceeding. p. 510.

By the COMMISSION:

FIRST REPORT REGARDING CRR MOTION TO COMPEL

On September 29, 1987, the Campaign for Ratepayers Rights (CRR) filed a motion to compel production of documents. That document requested the Commission to order the Public Service Company of New Hampshire (PSNH) to respond to its data requests set #1, requests 1-8. The proposed data requests requested documents and materials related to plans and projections PSNH has developed for a potential bankruptcy. PSNH has objected to the data requests on the grounds that bankruptcy is irrelevant to this proceeding and that all of the requested materials are privileged as attorney work-product, prepared in anticipation of a legal proceeding.

In this proceeding, PSNH is asking for rate relief as a part of the solution to resolve an alleged emergency. PSNH, via the prefiled testimony of Robert J. Harrison, indicates that unless the emergency is resolved PSNH will be forced into bankruptcy proceedings. PSNH has also indicated that even the receipt of the rate relief it has requested will not assuredly keep PSNH solvent and out of bankruptcy. Thus, according to PSNH's own representations, granting rate relief may postpone rather than eliminate a bankruptcy proceeding.

The commission further notes that the company has asked for extraordinary relief in this proceeding. PSNH has taken the position that rate relief developed on a

traditional basis; i.e., rate relief as allowed under RSA 378:30-a, would not be sufficient to

meet its cash needs. PSNH Supplemental Requests For Findings (filed September 24, 1987). It seems that information on what allegedly can be avoided or delayed by providing such relief may lead to the discovery of material that is relevant to this proceeding.

With regard to PSNH's claim of attorney work-product objection, the Commission finds the PSNH response inadequate. The commission hereby orders PSNH to either respond to the data requests with whatever documents or portions of documents that it does not consider privileged or does not claim privilege for. With regard to any document or any portion of any document that PSNH withholds on the grounds of attorney work-product privilege, PSNH shall identify each and every document being withheld sufficiently to tell the following:

(1) The documents author,

(2) all known readers and possessors of the document,

(3) the date of the document,

(4) and the number of pages of the document, and

(5) the subject(s) discussed in the document.

In addition, if PSNH claims attorney workproduct privilege, PSNH shall indicate the New Hampshire authority providing for an attorney work-product privilege in New Hampshire and authority supporting its recognition by the PUC. The word document herein should interpreted broadly as is commonly defined in discovery to include any writing, or electronically retrievable data, including drafts, notes, etc.

The commission further notes that it allows discovery for parties to gather, collect and assemble data to support their positions and to assist the commission in the resolution of the issues. CRR is entitled to gather data reasonably calculated to lead to the discovery of admissible evidence — particularly data in the possession of the company. PSNH has the opportunity to object on the basis of relevancy attorney workproduct, or other appropriate grounds.

Our Order will issue accordingly.

Separate Dissenting Opinion of Commissioner Bruce B. Ellsworth

[i] I cannot agree with my fellow commissioners in compelling responses to Campaign for Ratepayer Rights data requests set no. 1, requests 1 through 8. Those data requests involve questions regarding various plans of PSNH for a possible bankruptcy and the effects of a bankruptcy of PSNH.

Allowing discovery on and consideration of bankruptcy in this docket is not, in my view, within the intended scope of this docket. PSNH petitioned for an increase in rates because, it contended, it had been denied access to the capital markets, and higher rates were its only present source of additional revenues. If such is the case, that fact alone may constitute an emergency. Testimony and exhibits in this docket will provide us with the information to determine whether that is truly the case.

If that emergency exists, then I view it our responsibility to consider means to solve the emergency by analyzing whether the requested rates will accomplish that purpose.

This docket was not opened to consider whether bankruptcy was a reasonable alternative to

the company's petition. This docket was opened to consider whether an emergency exists, and whether, if that emergency exists, an emergency rate increase along with other actions will restore the faith of the financial community.

I must note that the commission did review the matter of PSNH bankruptcy in docket no. DF 84-200.[1](124) Although the supreme court indicated that the commission was not legally required to review that

Page 510

matter in that docket,[2](125) it is my opinion that the commission may find it appropriate to, in its discretion, again review the potential of a PSNH bankruptcy in a future docket. However, for the reasons stated above, this is not the docket to engage in such an investigation.

SUPPLEMENTAL ORDER

Upon consideration of the First Report Regarding CRR Motion to Compel, it is hereby

ORDERED, that PSNH shall provide responses as detailed in the foregoing Report by October 28, 1987; and it is

FURTHER ORDERED, that CRR shall report on or before November 2, 1987 as to what additional action, if any, CRR would like the Commission to take on its Motion.

By order of the Public Utilities Commission of New Hampshire this twenty-first day of October, 1987.

FOOTNOTES

[1]Re Public Service Co. of New Hampshire, 70 NH PUC 164, 247-262, 66 PUR4th 349 (1985).

[2]Re Conservation Law Foundation of New England, Inc., 127 N.H. 606, 625, 507 A.2d 652 (1986).

==========

NH.PUC*10/22/87*[60382]*72 NH PUC 511*Southern New Hampshire Water Company

[Go to End of 60382]

72 NH PUC 511

Re Southern New Hampshire Water Company

DR 87-171
Order No. 18,883

New Hampshire Public Utilities Commission

October 22, 1987

ORDER approving a special water main extension contract.

SERVICE, § 178 — Extensions — Contracts — Special agreements.

[N.H.] The commission approved a special main extension agreement entered into by a water utility and a developer, which would vary from the utility's existing extension tariff terms but which would benefit the public through aiding the developer.

By the COMMISSION:

ORDER

WHEREAS, on September 16, 1987, Southern New Hampshire Water Company, (Southern) filed a proposed Special Main Extension Contract No. 273 between Andrew C. Mack and Southern New Hampshire Water Company; and

WHEREAS, the utility has requested a departure from existing tariff terms and conditions regarding main extensions so that the developer (A.C. Mack) could receive partial refund of his contribution for main extensions as new customers are added; and

WHEREAS, on October 13, 1987 after discussion with Commission Staff, Southern submitted a revised contract addressing concerns raised by Staff; and

WHEREAS, after investigation of the revised contract it appears that the agreement is in the public good; it is hereby

ORDERED that Southern New Hampshire Water Company Special Main Extension Contract No. 273 submitted on October 13, 1987 be, and hereby is, approved for effect on the date of this Order.

By order of the Public Utilities Commission of New Hampshire this twenty-second day of October, 1987.

==========

NH.PUC*10/22/87*[60383]*72 NH PUC 512*New England HydroTransmission Corporation

[Go to End of 60383]

72 NH PUC 512

Re New England HydroTransmission Corporation

DSF 85-155
Supplemental Order No. 18,884

New Hampshire Public Utilities Commission

October 22, 1987

ORDER accepting a proposed allocation of the "host-state bonus" relating to an electric

transmission line.

ELECTRICITY, § 6 — Transmission lines — Allocation of "host-state bonus."

[N.H.] A 5% "host-state bonus" was allocated between three electric utilities according to a formula proposed by a hydroelectric corporation constructing and maintaining the transmission line involved.

By the COMMISSION:

SUPPLEMENTAL ORDER

WHEREAS, on December 8, 1986 the New Hampshire Public Utilities Commission granted a Conditional Certificate of Site & Facility to New England Hydro-Transmission Corporation (NEHT) to construct, operate and maintain an electric transmission line in Grafton, Merrimack, Hillsborough and Rockingham Counties, in Order Number 18,499, (71 NH PUC 727), and

WHEREAS, on page 30 of the report accompanying said order the commission provided that "...this commission has the authority to determine or change the allocation of the 5% share (host-state bonus) should it elect to do so in the future", and

WHEREAS, NEHT, by letter dated August 6, 1987 has requested the commission to make a determination as to the allocation of this bonus and asked that the commission's determination be that the bonus shall be allocated according to the percentages set out by NEHT in its testimony on the New England/Hydro Quebec Phase II Project, and

WHEREAS, NEHT has presented the following summary of results obtained through application of the allocation methodology defined in supplemental testimony of Robert O. Bigelow, exhibit 121 (ROB-20) pages 19-20 and attachment A:

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

Allocation of NH Host
NH Participant State Bonus

Public Service Co. of
 New Hampshire 4.1275%
UNITIL Power Co.  .5096
New England Power Co.  .3629

Total 5.0000%
```

and

WHEREAS, the commission finds that the proposed allocation is reasonable and therefore in the public good, and

WHEREAS, the parties to this proceeding and the public should be given an opportunity to respond in support of or in opposition thereto; it is

HEREBY ORDERED, that NEHT notify all parties by transmittal of a copy of this order by registered mail, and it is

FURTHER ORDERED, that notice be given via one time publication in a newspaper or newspapers having circulation in the areas of the State affected by the proposed transmission line; such publication to be no later than November 4, 1987 and be documented by affidavit filed with this commission on or before November 11, 1987, and it is

FURTHER ORDERED, that all persons desiring to respond to this petition may submit their comments in writing or may file a request for public hearing before this commission no later than November 10, 1987; and it is

FURTHER ORDERED, NISI that the allocation of the 5% host state bonus as given above is approved effective November 11,

1987 unless a timely request for hearing is received

By Order of the Public Utilities Commission of New Hampshire this twenty-second day of October, 1987.

==========

NH.PUC*10/27/87*[60384]*72 NH PUC 513*Public Service Company of New Hampshire

[Go to End of 60384]

72 NH PUC 513

Re Public Service Company of New Hampshire

DF 87-182
Order No. 18,886

New Hampshire Public Utilities Commission

October 27, 1987

PETITION to intervene in an electric utility's debt restructuring proceeding; granted.

---

1. PARTIES, § 18 — Intervenors — Standards and requirements — Commission discretion.

[N.H.] A petition for intervention in a case generally will be granted if the petition is submitted at least three business days prior to the hearing, the petition demonstrates that the petitioner's rights or interests may be affected by the proceeding, and the commission determines that such intervention is in the interests of justice and will not impede procedural matters; the commission has great discretion over intervention, however, and may grant intervention at any time and may impose restrictions on a party's participation as an intervenor. p. 514.

2. PARTIES, § 18 — Intervenors — Untimely filings — Factors.

[N.H.] Although a petition for intervention had not been timely filed in an electric utility's

debt restructuring case, the commission chose to exercise its discretion and grant intervention anyway, as the little amount of time between a revised notice of hearing and the hearing made it almost impossible to comply with filing time requirements, and as the petitioner was a major creditor and bondholder of the utility and thus its participation could greatly aid the commission in resolving financing issues. p. 515.

3. PARTIES, § 18 — Intervenors — Foreign corporations.

[N.H.] Although state statutes prohibit unregistered foreign corporations from initiating an action or suit in a state court, such statutes do not prevent foreign corporations from defending an action or suit brought against them in a state court; thus, a petitioner's status as a foreign corporation would not in itself disqualify it from eligibility to intervene in a matter before the commission. p. 515.

APPEARANCES: Martin L. Gross, Esquire and R. Carl Anderson, Esquire of Sulloway, Hollis & Soden and Thomas R. Jones, Esquire of Cahill, Gordon & Reindel on behalf of Public Service Company of New Hampshire; Mary Metcalf, pro se on behalf of the Campaign for Ratepayers Rights; Michael Holmes, Esquire, Consumer Advocate, and Joseph Rogers, Esquire, Assistant Consumer Advocate on behalf of the Office of Consumer Advocate; Martin C. Rothfelder, Esquire and Mary C. Hain, Esquire on behalf of the staff of the Public Utilities Commission; Maria H. Bainer, Esquire of Paul, Weiss, Rifkind, Wharton & Garrison, and David J. Dunfey, Esquire, of Sanders & McDermott on behalf of Consolidated Utilities and Communications, Inc.

By the COMMISSION:

REPORT GRANTING INTERVENTION BY CONSOLIDATED UTILITIES AND COMMUNICATIONS, INC.

On September 29, 1987 Public Service Company of New Hampshire (PSNH) petitioned for authority to consummate exchange offers related to certain of its outstanding securities and to consummate an offer to holders of its Pollution Control Revenue Bonds (PCRBs). On October 12, 1987 the commission received a motion to

intervene by Consolidated Utilities and Communications, Inc. (CUC). On October 14, the commission held a prehearing conference on this matter. At that conference, the commission heard arguments related to the petition for intervention by CUC. On October 16, 1987 the commission received a response of CUC to the objection of PSNH to CUC's intervention. This report and order grants the CUC intervention.

CUC's petition to intervene alleges that CUC is a significant creditor of PSNH. CUC also alleges that it holds a substantial number of PSNH's long term bonds. According to the petition, the long term bonds it holds are involved in the exchange of securities proposed by PSNH that is the subject of this docket. CUC alleges that because of the proposed exchange of its bonds and the bonds of others, its interests will be directly affected by this proceeding.

PSNH objected to the CUC intervention. In support of its objection, PSNH asserted that

CUC filed its petition to intervene late, served a copy of its petition on PSNH that was unsigned, and had no affidavit or other material of evidentiary value attached to the petition for intervention. PSNH argued that the commission has no statutory authority to consider "CUC's proposal", that the commission has not been advised of what state CUC is incorporated in, and that the commission has not been given any information concerning whether CUC has complied with the New Hampshire Security Takeover Disclosure Act, RSA 421-A. PSNH noted that RSA 293-A:131 I. restricts certain foreign corporations from bringing or maintaining suit in New Hampshire. PSNH also argued that allowing CUC to intervene would allow CUC to gain advantage in its announced intent to gain control of PSNH. PSNH particularly voiced concern over CUC's right to discovery as an intervenor, focusing on both the delays and information that CUC could obtain through discovery rights.

In response to the PSNH arguments, CUC, among other things, argues that its petition was timely and further alleges that the time frames for filing were particularly short. CUC emphasized the interests it has as a bondholder, asserted that no other party adequately represents its interests, and stated that it has no intent to disrupt or delay the proceedings. CUC further argued that other matters raised by PSNH, such as the New Hampshire Takeover Disclosure Statute (RSA 421-A) and the restrictions of RSA 293-A:131 do not apply.

The consumer advocate supported the petition of CUC. Staff took no position, but suggested that the commission consider granting CUC's intervention for the limited purpose of developing a procedural schedule and then deferring a decision on CUC's intervention for other aspects of the case.

[1] Turning to the merits of this matter, RSA 541-A:17 I. provides that the commission shall grant petitions for intervention if: (a) the petition is submitted to the commission at least three days prior to the hearing in the commission's order of notice, (b) the petition states facts demonstrating that the petitioner's rights, duties, privileges, immunities and other substantial interests may be affected by the proceeding; and (c) the commission determines that the interest of justice and orderly and prompt conduct of the proceedings would not be impaired by allowing the intervention. The commission may grant petitions for intervention at any time upon determining that such intervention would be in the interest of justice and would not impair in the orderly and prompt conduct of the proceedings. RSA 541-A:17 II. The commission may impose limitations on a party's intervention as long as the limitations are not so extensive as to prevent the intervenor from protecting the interests which form the basis of the intervention. RSA 541-A:17 III.-IV. It is these standards that must govern the commission's actions herein regarding the CUC petition for intervention.

Under the commission's Revised Order of Notice issued October 7, 1987, the only proceeding set was the prehearing conference set for October 14, 1987. The commission's order of notice indicated that matters of intervention and of the procedural schedule for the duration of the

proceedings, among other things, would be considered at that prehearing conference. The order of notice further provided that any parties seeking to intervene in the proceeding must

submit a motion to intervene at least three days prior to the hearing, citing RSA 541-A:17 and Puc section 203.02. This Revised Order of Notice revised the original Order of Notice issued October 6, 1987. The original Order of Notice issued on October 8 set a prehearing conference for October 14, 1987 and a hearing for October 21, 1987.

Under N.H. Admin. Rules, Puc 202.03, computation of any time period referred to in the commission rules begins with the first day following that on which the act which initiates such period of time occurs. The last day of the period so computed is to be included unless it is a day in which the offices of the commission are closed, in which event the period shall run until the end of the next following business day.

[2] The commission finds that under the Revised Order of Notice the prehearing conference set by the commission should be deemed a hearing from which the three day period is counted from. Under the commission rules cited above, three days prior to Wednesday, October 14, 1987 would fall on Friday, October 9, 1987. Monday, October 12, 1987, the day that petition was filed on, would constitute two days prior to the October 14, 1987 date. Thus, the petition was not timely filed.[1](126) Since the petition was not timely filed, the commission shall consider this petition under its discretionary authorization of intervention under RSA 541-A:17 II.

The commission's original order of notice was issued October 6, 1987. The commission's revised order of notice, the relevant order of notice for this matter, was issued on October 7, 1987 and published on October 8, 1987. The commission finds that it would be difficult for a party to meet the time frame of filing its petition to intervene on October 9, 1987 and mailing said petition to the parties on the same date. The commission further finds that the party is located in New York City, New York, which may provide difficulty in complying with the time frames of the Revised Order of Notice particularly difficult.[2](127)

The commission finds that the petition states facts demonstrating that the petitioner's substantial interests may be affected by this proceeding. Those stated facts are CUC's holding a substantial number of bonds involved in the proposed debt restructure and the effect on CUC of the potential restructure, including the potential exchange of bonds by other bondholders. The commission also finds that granting the intervention would not impair the orderly and prompt conduct of the proceedings. The commission's control of the proceeding, including discovery (if necessary), will restrict any unnecessary delay or disorder in this important proceeding regardless of whether there is one more intervenor.

The commission further finds that the lateness of the CUC petition and the lack of signature on the copy of its petition filed with PSNH did not prejudice any party, for no party alleged such prejudice. In addition, it seems undisputed even by PSNH that CUC holds PSNH bonds. The commission finds that the participation of an interested bondholder such as CUC may lead to evidence or argument that will aid the commission in resolving this matter. Based on the limited material before it at this stage of the case, the commission finds that allowing CUC's intervention serves the interest of justice. Thus, the commission shall grant CUC's intervention pursuant to RSA 541-A:17 II.

The grant of CUC's intervention should not be considered a rejection of the PSNH concerns over the potential result of discovery providing CUC with an advantage in its relationship with PSNH. Nevertheless, the commission finds that denial of intervention is an inappropriate remedy

to deal with potential future problems of this nature. The commission notes that it will not hesitate to limit discovery and other rights of CUC and other intervenors in this proceeding to the extent that such actions are necessary under the circumstances.

[3] In response to PSNH's argument, the

commission finds that CUC's status as a foreign corporation, and the provisions of RSA 293-A:131 are not relevant to this decision. RSA 293-A:131 I. provides that an unregistered foreign corporation doing business in the state may not maintain an action, suit or proceeding in any court of the state. RSA § 293-A:131 II. qualifies paragraph I. of that section by stating that the lack of registration shall not prevent a corporation from defending an action, suit or proceeding in any court of this state. Thus, this statute was not intended to prevent foreign corporations from defending any rights that it may have in any proceeding — including its rights to intervene.[3](128)

The commission also finds irrelevant the PSNH argument that CUC has not complied with the Security Take Over Disclosure Act, RSA § 421-A. That statute requires persons intending to take over securities of a New Hampshire domestic corporation to file registration statements with the New Hampshire Insurance Department. Whether or not CUC has filed registration statements with the insurance department is not relevant to CUC's rights under the law to intervene in this proceeding. Furthermore, the commission finds no reason to, at this time, determine whether CUC has complied with this provision of New Hampshire law.[4](129)

Our order will issue accordingly.

ORDER

Based upon the foregoing REPORT GRANTING INTERVENTION BY CONSOLIDATED UTILITIES AND COMMUNICATIONS, INC., which is incorporated herein by reference; it is

ORDERED, that the petition for intervention of Consolidated Utilities and Communications, Inc. is granted; and it is

FURTHER ORDERED, that the prehearing conference in this matter shall continue on November 9, 1987 at 10:00 a.m.

By order of the Public Utilities Commission of New Hampshire this twenty-seventh day of October, 1987.

FOOTNOTES

[1]This result is also consistent with RSA 21:35.

[2]The commission assumes, for purposes of disposition of this motion, that the copy of the CUC motion for intervention served on PSNH lacked a signature but was otherwise a copy of the petition. Thus, in addition to being untimely, CUC's service of a copy was deficient in that respect as well. The commission finds that insignificant in that there was no real question as to the authenticity of the motion.

[3]The commission notes that to establish the affirmative defense of incapacity of a foreign corporation to sue under RSA 293A:131 because of failure to register, a defendant must prove that the transaction out of which the action arose was an intrastate transaction, the transaction must have constituted doing business within the meaning of the chapter, and the defendant must show that the plaintiff was an unregistered foreign corporation. Guyette v. CNK Development Co., 122 N.H. 913, 451 A.2d 13, 18 (1982).

Consistent with the discussion of the statute above, Guyette refers to the defendant showing incapacity rather than the petitioner showing these matters. PSNH, however, is the petitioner in this proceeding. Second, PSNH has not proven these three factors.

The commission further notes that it has not even decided whether RSA 293-A:31 applies at all to administrative proceedings.

[4]On October 22, 1987, the commission received the PSNH Reply to Response of CUC Regarding Intervention. The commission has also considered that filing prior to issuing this report and order.

==========

NH.PUC*10/28/87*[60385]*72 NH PUC 516*Customer Deposits

[Go to End of 60385]

72 NH PUC 516

Re Customer Deposits

DRM 87-128
Order No. 18,887

New Hampshire Public Utilities Commission

October 28, 1987

ORDER amending the interest rate payable by utilities on customer deposits.

PAYMENT, § 62 — Security for payment — Deposits — Interest on deposits.

[N.H.] Rules governing the interest rate to be paid by utilities on customer deposits were

amended so that interest shall be payable by the utility on all deposits held six months or longer at a rate equal to the base rate on corporate loans at large United States money center commercial banks — i.e., the prime rate; said prime rate is to be fixed on a quarterly basis and is to be established as reported in the Wall Street Journal on the first business day of the month proceeding the calendar quarter; if more than one rate is reported the average of the reported rates shall be used; customer accounts shall be credited with simple annual interest and paid

upon the refund of deposit.

APPEARANCES: Manchester Gas Corporation; Concord Natural Gas Corporation; Gas Service Inc.; New Hampshire Telephone Association; Union Telephone Company; Northern Utilities Inc.; New Hampshire Electric Cooperative, Inc.; New England Telephone and Telegra

ph Company; Granite State Electric Company; Public Service Company of New Hampshire; Office of the Consumer Advocate; and Staff of the Public Utilities Commission of New Hampshire.

By the COMMISSION:

REPORT

I. PROCEDURAL HISTORY

In a Notice of Proposed Rulemaking, the New Hampshire Public Utilities Commission (NHPUC/Commission) proposed to amend the interest payable by utilities on customer deposits. This Commission initiated a rulemaking procedure relative to the Rules and Regulations for Electric, Telephone, Gas and Water Utilities. On June 5, 1987 the Commission filed a cover sheet for a Fiscal Impact Statement and the proposed text with the Legislative Budget Assistant. On June 17, 1987, a Fiscal Impact Statement (FIS 87:077) was returned to the Commission for review and then forwarded to the Administrative Procedures Division, Office of Legislative Services, in accordance with the August, 1985 New Hampshire Rulemaking Manual.

On July 1, 1987, a Rulemaking Notice Form was filed with the Director of Legislative Services which proposed to amend and supplement Chapters 300, 400, 500 and 600. The Commission set a public hearing to be held on September 29, 1987 at 10:00 a.m. at the Commission's Concord office.

A copy of the rulemaking notice and of the proposed rules were forwarded to the Director of Legislative Services, State House, Concord, for publication and reporting in the New Hampshire Rulemaking Register on July 17, 1987.

II. SUMMARY OF COMMENTS

On July 20th 1987 notification was sent to all of the utilities. Interested parties were invited to file comments on or before September 18, 1987. Reply comments were filed by: Connecticut Valley Electric Company Inc. (CVEC), New Hampshire Electric Cooperative, Inc. (Cooperative), Granite State Electric Company (Granite State Electric), UNITIL Service Corp. (UNITIL), Public Service Co. of New Hampshire (PSNH), Concord Natural Gas (CNG), Gas Service Inc. (GSI), Manchester Gas Corporation (MGC), Northern Utilities, Inc. (Northern), New England Telephone (NET), New Hampshire Telephone Association (NHTA), Union Telephone Company (Union), Office of Consumer Advocate (OCA) and Volunteers Organized In Community Education (VOICE).

Prefiled Testimony was submitted by CNG, GSI, and MGC through the Manager of Treasury Services, Energy North Inc. (ENI), to discuss their concerns. The NHPUC Staff submitted for filing a Position Paper and amended proposed rules regarding interest rates on customer deposits.

III. POSITION OF PARTIES

In light of the written comments received from the companies the Commission Staff

made a statement in support of the proposed rule and submitted a recommendation to the Commission (Exhibit 14). Staff believes that the Prime Rate is the proper rate to use for interest to be paid on customer deposits. Customer deposits represent funds that have been provided involuntarily to the company thus allowing companies to avoid borrowing that amount of money. The Prime Rate is the "avoided cost" to the utility in the short run, in that it is the rate at which utilities generally borrow their short term funds.

ENI testified that their companies were interested in maintaining a relatively stable rate, easily understood by customers. They advocated using either, a one year Certificate of Deposit rate, or a one year Treasury Bill rate, to be set by the Commission and held constant for a period of six (6) months or longer and applicable to all utilities.

The NHTA supports the Commission Staff's position that the interest rate should fluctuate with market conditions. They recommend, however, that a one-year Certificate of Deposit is the best interest rate to be used. The Company further stated that a rate fluctuating on a quarterly basis, would result in administrative problems for the companies.

Union also supports the proposal that interest rates should fluctuate with market conditions. Union recommends that a oneyear Certificate of Deposit is the best interest rate to be used. The Company also claimed and agreed that rates should be just and reasonable to the customer.

Northern, in their written comments (Exhibit 5), proposed that the interest rate paid on customer deposits be company specific, and reflect the short-term nature of the deposit. The Company recommended using a two-year U.S. Treasury Note as a basis for rate setting, with the rate being updated on an annual basis.

The Consumer Advocate recommended that rules not be put into effect prior to January 1, 1988, allowing companies nec- essary administering time. The position taken was that rates should apply to all customer deposits and not just those held six (6) months or more. The Prime Rate plus two percent (2%), was recommended because of their need to borrow money is reduced by the amount of customer deposits held. The Consumer Advocate further supported Staff's use of a quarterly rate, stating this would provide a standard calculation and would meet the needs of some of the companies that have problems in making changes more often.

PSNH substantially agreed with the Staff revision to the proposed rule, with a recommendation that the effective date be January 1, 1988.

CVEC (Exhibit 13) supported the proposed rule in a written response, stating the change would make the interest credited to customers more reflective of the market value of the deposit than the current rule. CVEC stated further concerns relating to the rate updates, and requested that the Commission limit the number of interest rate updates to no more than four per year.

Concord Electric Company and Exeter & Hampton Electric Company in their written comments of September 17, 1987 (Exhibit 10) supported the change from the current fixed rate

of 10% to a variable rate based on an index such as the New York prime reported in The Wall Street Journal.

New England Telephone (Exhibit 9) supports the proposed use of the New York prime interest rate as reported in The Wall Street Journal as the benchmark in determining the interest rate to be paid on customer deposits.

A change in the procedure used to compute the interest rate on customer cash deposits was endorsed in comments filed by Granite State Electric Company (Exhibit 11). Granite State recommended adopting the 2-year Treasury Bill (T-Bill) rate for calculating interest to be paid on customer cash deposits for the current month.

The Cooperative (Exhibit 8) in response to the Commission's Rulemaking Notice, stated no objection to tying the interest rate to a readily determinable index. The Cooperative believes that the actual rate to be paid on customer deposits should be

Page 518

consistent with their ability to earn a money at such a rate. An expressed concern was that adjustment to the rates not occur frequently, as it could result in significant additional processing burdens resulting in greater expense.

IV. COMMISSION ANALYSIS

The Commission believes that a change in the procedure for establishing interest rates to be paid on customer deposits is necessary. We support the Staff position that the Prime Rate comes closest to meeting the objectives of the Commission and best weighs the interest of the companies and their customers. The Commission determines, therefore, that the Prime Rate is the proper rate for use in calculating interest on customer provided funds. A variable interest rate will provide for flexibility in times of changing interest rates. The Prime Rate reflects current money market conditions, and, as such, compensates ratepayers for the loss of investment income. At the same time the Prime Rate is representative of company borrowing costs and, therefore, recognizes that customer deposits represent a source of capital to the companies.

Based on an analysis of the comments filed in this proceeding, the Commission has decided to adopt the staff proposal, as submitted in its position paper, with certain modifications. The Prime Rate, as reported in The Wall Street Journal on the first business day of the month preceding the current quarter, is to become the effective rate on the first day of the calendar quarter (i.e., December 1, 19xx for the calendar quarter January 1, 19xx thru March 31, 19xx). This methodology provides a well known and easily understandable index. The Prime Rate results in payment of the current rate of interest based upon customer investment opportunities and company borrowing costs at a level which is readily determinable by the companies and by the rate payers. The predetermined times for fixing the rates will provide the companies with an ease of administration in terms of compilation, dissemination, accounting, programming and training office personnel.

In order to provide the companies sufficient time to implement these rules, the Commission has made these rules effective January, 1, 1988.

Accordingly, we will allow an amendment as follows:

PUC 303.04; PUC 403.04; PUC 503.04; PUC 603.04; (b)(2)

Interest shall be payable by the utility on all deposits held six (6) months or longer at a rate equal to the base rate on corporate loans at large U.S. money center commercial banks (Prime Rate). Said Prime Rate is to be fixed on a quarterly basis for periods ending March, June, September and December of any given year. The Prime Rate is to be established as reported in The Wall Street Journal on the first business day of the month preceding the calendar quarter. If more than one prime rate is reported in The Wall Street Journal, the average of the reported rates shall be used. Customer accounts shall be credited with simple annual interest and paid upon the refund of deposit.

Our order will issue accordingly.

ORDER

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

ORDERED, pursuant to the provisions of RSA 374:8 and in accordance with RSA 541-A, the Administrative Procedures Act, and after a duly noticed public hearing held on September 29, 1987; it is

ORDERED, that Rule Numbers 303.04 (b)(2), 403.04 (b)(2), 503.04 (b)(2), and 603.04 (b)(2) attached hereto and entitled "Deposits" is hereby adopted, effective January l, 1988; and it is

FURTHER ORDERED, that the previous Rules 303.04, 403.04, 503.04, and 603.04 as promulgated under Order No. 17,328,

dated November 26, 1984 (69 NH PUC 667), is hereby amended, effective January 1, 1988.

By order of the Public Utilities Commission of New Hampshire this twenty-eighth day of October, 1987.

==========

NH.PUC*11/02/87*[60386]*72 NH PUC 520*Public Service Company of New Hampshire

[Go to End of 60386]

72 NH PUC 520

Re Public Service Company of New Hampshire

DR 87-151
Ninth Supplemental Order No. 18,890

New Hampshire Public Utilities Commission

November 2, 1987

ORDER presenting an estimation of the amount of investment by an electric utility in a nuclear

generating facility.

VALUATION, § 16 — Methods and measures for ascertaining rate base — Estimates of utility investment.

[N.H.] For purposes of replying to an order of the state supreme court, the commission quantified the amount of investment by an electric utility in one unit of its nuclear generating facility, developing a final estimate of the level of investment that included 50% of common plant and 100% of a termination yard and education center, and that omitted indirect costs.

By the COMMISSION:

SUPPLEMENTAL REPORT REGARDING FINDINGS PURSUANT TO SEPTEMBER 2, 1987 SUPREME COURT ORDER

Pursuant to the directions of the Commission, the parties to this proceeding convened a conference at 9:00 a.m. on October 16, 1987 to determine if agreement could be reached to quantify the amount of common plant investment that should be utilized to complete the table at page 24 of the Report Regarding Findings Pursuant to September 2, 1987 Supreme Court Order and Sixth Supplemental Order No. 18,873, 72 NH PUC 485 (October 14, 1987)

hereinafter cited as October 14 Order]. At approximately 10:30 a.m. on that day, the parties informed the commission that the conference did not produce an agreement. Thus, the commission held a hearing to take evidence on this matter of common plant investment on October 22, 1987.

Based upon the evidence heard at that hearing the commission makes the following findings to supplement its October 14 Order. Evidence relevant to developing the required investment amounts appears in exhibits 36, 47, 48 and late filed exhibit 56,[1(130)] as well as the oral testimony provided at the hearing on October 22. Column 2 of the table on page 24 of the October 14 Order, and column 2 of exhibit 36, page 2 (the page after the cover letter) include investment in Unit I along with 100% of common plant, the termination yard, and the education center. Pursuant to the October 14 Order, the commission desires to develop a final Unit I investment number that includes 100% of the termination yard and education center, but 50% of common plant. Exhibits 47, 48 and 56 contain reasonable numbers on common plant investment except that these exhibits include investment in the termination yard and education center. Thus, the commission must adjust the numbers in exhibits 47, 48 and 56 to exclude the investment in the termination yard and education center.

In exhibit 36, page 2, columns 3 and 4 reflect investment in the education center and termination yard. However, those investment numbers include amounts recorded as common plant plus amounts of indirect costs associated with the termination yard and education center. Based on the testimony at the hearing, the commission finds it reasonable to assume that approximately 1/3 of the amounts listed in exhibit 36, page 2, columns 3 and 4 for the

termination yard and education center are indirect costs.

Based on the foregoing, the commission shall develop final numbers for estimates of PSNH investment in Unit I for purposes of replying to the supreme court order as follows. First, the commission shall reduce the education center and termination yard figures in exhibit 36, page 2, columns 3 and 4, by one-third to remove indirect costs. These adjusted numbers reasonably approximate the common plant costs in the education center and termination yard. The commission subtracts these adjusted numbers from the common plant figures in exhibits 47, 48 and 56. The resulting numbers are the common plant numbers appropriate to fit into the formula and the table on page 24 of the commission's October 14 Order. The table below shows the results from completing the formula in the table on page 24 of the October 14 Order and constitutes the commission's findings on investment in Unit I. This report and order completes the findings with regard to the September 2, 1987 order in supreme court case no. 87-311.

PSNH INVESTMENT IN UNIT I

Date PSNH Investment in Unit I

04/30/77 65,003,098
05/31/78 152,376,338
04/30/79 214,210,548
12/31/79 287,920,316
12/31/80 408,505,079
12/31/81 445,555,835
12/31/82 607,373,109
12/31/83 854,348,392
12/31/84 1,084,696,629
12/31/85 1,347,895,265
12/31/86 1,624,262,219
12/31/87 1,766,468,881

Our order will issue accordingly.

CONCURRING OPINION OF COMMISSIONER LINDA G. BISSON

I concur with the foregoing decision of the majority but, consistent with our October 14 Order, add the following clarification. For reasons stated in my concurring opinion of October 14, the schedule below adjusts investment to delete the education center and the termination yard. In my opinion, column 5 (the column to the far right) of the schedule below most accurately reflects the PSNH investment in Unit I.

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

Adjustment for Assets
Subsequently Placed
in Rate Base

Date	Investment	Ed Ctr.	Term Yard	Investment
04/30/77	65,003,098	136,004	213,333	64,653,761
05/31/78	152,376,338	890,433	956,318	150,529,587
04/30/79	214,210,548	1,063,924	659,723	212,486,901
12/31/70	287,920,316	1,124,722	4,857,386	281,938,208

12/31/80	408,505,079	1,146,217	7,252,975	400,105,887
12/31/81	445,555,835	1,148,573	7,252,975	437,154,287
12/31/82	607,373,109	1,161,072	6,995,909	599,216,128
12/31/83	854,348,392	884,370	6,995,909	846,468,113
12/31/84	1,084,696,629	884,370	6,995,909	1,076,816,350
12/31/85	1,347,895,265	884,370	6,995,909	1,340,014,986
12/31/86	1,624,262,219	884,370	6,995,909	1,616,381,940
07/31/87	1,766,468,881	884,370	6,995,909	1,758,588,602

SUPPLEMENTAL ORDER

Based upon the foregoing SUPPLEMENTAL REPORT REGARDING FINDINGS PURSUANT TO SEPTEMBER 2, 1987 SUPREME COURT ORDER, which is incorporated herein by reference; it is

ORDERED, that the foregoing report, along with the October 14 Order, constitutes the commission's findings pursuant to the Supreme Court order of September 2, 1987 in its case no. 87-311.

By order of the Public Utilities Commission of New Hampshire this second day of November, 1987.

FOOTNOTES

[1]PSNH filed exhibit 56 on October 23, 1987 pursuant to direction of the commission during the October 22, 1987 hearing.

==========

[Go to End of 60387]

72 NH PUC 522

Re Northern Utilities, Inc.

DR 87-188
Order No. 18,893

New Hampshire Public Utilities Commission

November 2, 1987

ORDER revising the cost of gas adjustment clause rate of a natural gas distribution utility.

AUTOMATIC ADJUSTMENT CLAUSES, § 32 — Cost of gas adjustment clause — Procurement practices — Natural gas distribution utility.

[N.H.] A proposed revision that the cost of gas adjustment clause rate of a natural gas distribution utility was approved, however, in response to questions raised by the commission staff, the commission directed the utility to aggressively pursue new procurement practices designed to assure that the most favorable fuel prices are being obtained.

APPEARANCES: For Northern Utilities, Inc., Elias G. Farrah, Esquire.

By the COMMISSION:

REPORT

On September 30, 1987, 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 1987-88 Winter Cost of Gas Adjustment (CGA) for effect November 1, 1987. This cost of gas adjustment was to be a surcharge credit of $(.1818) per therm.

An Order of Notice was issued setting the date of the hearing as of October 27, 1987 at the Commission offices in Concord, New Hampshire.

On October 27, 1987 Northern revised its proposed CGA rate to a credit of $(.1914) per therm. This reduction was caused by two factors. The first factor was two refunds from Granite State Gas Transmission; one regarding the Federal Energy Regulatory Commission (FERC) Order No. 399-B relating to Tennessee Gas Pipeline Company recovery of payments made to its producers for the difference between wet and dry Btu, and one regarding Tennessee Gas Pipeline Company results of revised billing due to Settlement Rates pursuant to the Stipulation and Agreement in FERC Docket No. RP85-178. The second factor dealt with the Granite State Gas Transmission proposed rates, which were rejected by FERC.

The revised rate, filed by Northern, is a decrease of $.1017 per therm from the prior winter period rate of $(.0897) per therm.

During the hearing, on October 27, 1987, the following issues were discussed: a) Northern's sales forecast for the 1987-88 winter period; b) the FERC Order No. 94 surcharge; c) supplemental gas purchases; d) pipeline take or pay costs; e) underground storage costs; f) Order 436, open access transportation.

We will accept the company's proposed figures for the purposes of determining the winter CGA, and we note that, but for a single exception, the resulting customer gas rates are the lowest since at least the summer of 1984.

We have reservations about the company's purchasing policy, however. In response to questioning by Staff regarding supplemental gas purchasing practices, one of Northern's witnesses stated that the existing contract, with its parent, Bay State, to supply the Company's winter supplemental needs was concluded without first soliciting competitive bids. Staff also submitted a comparison of expected average Propane and LNG costs for this coming winter for

several New Hampshire gas utilities. The analysis was based on data obtained from each company's CGA filing and showed Northern paying 18% more for Propane and 22% more for LNG than the next most costly utility.

Accordingly, the Commission directs Northern, in its next CGA filing, to aggressively pursue new procurement practices which will assure that the most favorable fuel prices are being obtained.

The Commission further directs the Company to respond to staff's request for an economic comparison of LNG and Propane costs.

During the hearing staff submitted an exhibit that compared the projected cost of propane and LNG for several New Hampshire gas utilities. Through cross-examination of various utility witnesses it became apparent that one reason for the cost difference displayed in the exhibit was the variation in transportation costs for each company. In order to assist staff and the Commission in the analysis of company commodity costs we direct the utilities to provide in future filings the following cost breakdown:

A. Product cost, F.O.B. sellers terminal;

B. Transportation costs;

C. Other costs.

This breakdown will be provided on Attachment A of the CGA filing and will be reported for both LNG and Propane.

Our Order will issue accordingly.

ORDER

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

ORDERED, that Seventh Revised Page 24, superseding Sixth Revised Page 24 of Northern Utilities, Inc. tariff N.H.P.U.C. No. 7-GAS, providing for a Cost of Gas Adjustment of $(0.1818) per therm for the period November 1, 1987 through April 30, 1988, be, and hereby is, rejected; and it is

FURTHER ORDERED, that Eighth Revised Page 24, superseding Seventh Revised Page 24 of Northern Utilities, Inc. tariff N.H.P.U.C. No. 7-GAS, providing for a Cost of Gas Adjustment of $(0.1914) per therm for the period November 1, 1987 through April 30, 1988, be, and hereby is, accepted effective on all bills issued on or after November 1, 1987; 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 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 second day of November, 1987.

==========

NH.PUC*11/05/87*[60388]*72 NH PUC 524*Public Service Company of New Hampshire

[Go to End of 60388]

72 NH PUC 524

Re Public Service Company of New Hampshire

DR 87-151
Tenth Supplemental Order No. 18,901
New Hampshire Public Utilities Commission
November 5, 1987

TRANSFER of a question of statutory interpretation for determination of commission authority to grant emergency rate relief.

RATES, § 630 — Authority to grant emergency rate relief — Rate-making standards — Statutory interpretation.

[N.H.] A question of statutory interpretation was transferred to the state supreme court with a request that the question be joined with related questions of law already transferred, to determine whether the commission had statutory authority to grant an electric utility emergency rate relief using standards other than traditional rate-making standards, and whether emergency rates could be based on a strictly cash flow need.

By the COMMISSION:

SUPPLEMENTAL ORDER

WHEREAS, Public Service Company of New Hampshire filed for emergency rates in August of 1987; and

WHEREAS, the New Hampshire Public Utilities Commission issued on August 11, 1987 an Interlocutory Transfer Without Ruling which contained two questions; and

WHEREAS, subsequent to said date the supreme court remanded the matter to the New Hampshire Public Utilities Commission to make certain findings a fact; and

WHEREAS, the commission held hearings and by Order Nos. 18,873 and 18,890 (72 NH PUC 520) responded to the request made by the supreme court; and

WHEREAS, subsequent to said orders the commission has substantially concluded its hearings regarding the merits of the emergency rate request; and

WHEREAS, in reviewing the record the commission has determined that there exists a question of law pertaining to the statutory interpretation of RSA 378:9 as it relates to RSA

378:30-a; and

WHEREAS, the commission determines that it is in the public interest to resolve the question of statutory interpretation to determine whether or not the commission has the statutory authority to grant emergency rate relief using standards other than the traditional ratemaking standards and to further determine whether or not the emergency rates can be based on a strictly cash flow need; it is therefore

ORDERED, that pursuant to RSA 365:20 that the following question of law be reserved, certified and transferred to the New Hampshire Supreme Court with the further request that said question be joined with the questions docketed by the court as 87-311 and set forth in the Interlocutory Transfer Statement issued by the commission with Order No. 18,788, 72 NH PUC 349 (August 11, 1987):

3. Does the proper interpretation of RSA 378:9, which provides that the commission may "temporarily ... alter, amend or suspend any existing rate, fare, charge, price, classification or rule or regulation relating thereto ..." when it finds that an emergency exists, allow the commission, upon the finding that an emergency exists, to depart from traditional ratemaking methods to establish temporarily rates which will allow a utility to meet cash flow requirements, notwithstanding the provisions of RSA 378:30-a?

By order of the Public Utilities Commission of New Hampshire this fifth day of November, 1987.

==========

NH.PUC*11/09/87*[60389]*72 NH PUC 525*Portsmouth Cellular Limited Partnership

[Go to End of 60389]

72 NH PUC 525

Re Portsmouth Cellular Limited Partnership

DE 87-126
Order No. 18,903

Re JHP Partnership

DE 87-136
Order No. 18,903

Re Starcellular

DE 87-137
Order No. 18,903

Re Manchester NECMA Limited Partnership

DE 87-154
Order No. 18,903

New Hampshire Public Utilities Commission

November 9, 1987

ORDER denying motions for rehearing of an order that found that the commission has authority to regulate cellular mobile radio telephone service.

PUBLIC UTILITIES, § 117 — Telephone — Cellular mobile radio telephone service — Regulatory status.

[N.H.] In denying motions for rehearing of an order that found that the commission has authority to regulate cellular mobile radio telephone service, the commission found that the movants had not raised any issues not lawfully and reasonably determined in the original decision and, that the original order was not inconsistent with a prior decision declining to regulate the resale of cellular service.

By the COMMISSION:

REPORT ON MOTION FOR REHEARING OF DE 87-126, PHASE I

On October 13, 1987 Manchester NECMA Limited Partnership (Manchester), the petitioner in DE 87-154, Portsmouth Cellular Limited Partnership (Portsmouth), the petitioner in DE 87-126, and JHP Partnership (JHP) the petitioner in DE 87-136 filed, pursuant to RSA 541, et seq., a motion for rehearing of the commission's Report and Order No. 18,848 in DE 87-126, Phase I, 72 NH PUC 445 (Sept. 24, 1987). This motion prays that the commission grant a rehearing of its decision finding that the commission has authority to regulate cellular mobile radio telephone service.

I. Background

Portsmouth, Manchester, and JHP filed petitions requesting exemption from regulation by the Public Utilities Commission ("commission" or "P.U.C.") or in the alternative for permission to construct and own facilities for, and to commence and engage in the business of, providing service as underlying cellular telecommunications service carriers. The procedural history of these various dockets concerning the outstanding motion is set forth in the commission's Report and Order No. 18,848, Re Portsmouth Cellular Limited Partnership, (Sept. 24, 1987) (the Phase I Order).

At a prehearing conference held on August 11, 1987 the parties agreed that Phase I would be a generic proceeding to consider whether the Commission has authority to regulate cellular service. The parties agreed to a procedural schedule, approved in Report and Order No. 18,804, that provided that the parties would file memoranda of law on the authority of the Public Utilities Commission to regulate cellular telephone activities in New Hampshire and that a decision would be rendered without a hearing on this phase (72 NH PUC 370). After reviewing the legal memoranda in the case the commission issued The Phase I Order finding that it had jurisdiction over cellular mobile radio telephone service.

II. The Motion

The motion for rehearing states that the commission's decision is unlawful, unjust

and unreasonable in that it erroneously finds that cellular service carriers are public utilities and that each petitioner is a public under RSA §362:2. The movants also argue that the decision is inconsistent with the commission's decision in Re Motorola Cellular Services, Inc., Docket DE 85-395, Report and Order No. 18,216, 71 NH PUC 240 (Apr. 14, 1986) (Motorola). Further, the movants aver that the decision was unjust, unlawful, and unreasonable in that

without any evidentiary record or investigation, the Commission has made findings of fact about the pertinent characteristics of the cellular industry to support the conclusions that (a) the service "falls squarely within the definition of a public utility", (b) a public need exists to regulate cellular service, and (c) that the cellular market is a duopoly and not a competitive market.

The movants ask that consideration of this motion for rehearing be held in abeyance pending resolution of the franchise, tariff, ratemaking, rulemaking and other issues.

III. Commission Analysis

The commission denies the request of the movant to hold a decision on the motion in abeyance. We, hereby, deny the motion for rehearing on the grounds that the matters presented in the motion do not raise any issues not lawfully and reasonably determined in the original decision.

In answer to the movants assertions that the commission's decision is unjust, unlawful and unreasonable in that it holds as a matter of law that cellular service carriers and the petitioners are public utilities pursuant to RSA 362:2, we find that the movant has not raised any issue not lawfully and reasonably determined in our decision. We, therefore, deny the motion for rehearing on this ground.

The Phase I Order is not inconsistent with the commission's Motorola decision. In Motorola, at 8 the commission determined that resellers of cellular service are not natural monopolies because, among other things, barriers to entry are low since little capital investment is required. Therefore, the commission does not regulate the resale of cellular service.

On the other hand in the Phase I Order the commission determined that the Federal Communications Commission has erected barriers to entry in the underlying cellular carriers market such that only two carriers may be licensed to provide service per franchise area. Since the underlying cellular service is provided by a franchised duopoly it falls within the economic behavior that the enabling statutes (RSA §§374:22 and 362:2) were intended to include. Phase I Order, at 18. In addition, resellers do not invest in equipment. They merely resell access numbers. Motorola, at 3. However, underlying carriers construct, control, and operate a system of transmission facilities for interconnection with the public switched network. Phase I Order, at 12. Therefore, these services fall within the specific meaning of the definition of "public utility" under RSA §362:2. Id. We deny the motion to rehear on the ground that the Phase I Order is inconsistent with our Motorola decision.

The commission's order rests on sufficient evidence. In finding that the service is a "public utility," the commission relied upon Federal Communications Commission decisions acknowledged by all of the parties and upon material set forth in legal memoranda this is not in dispute.

The movants mischaracterize the commission's decision by stating that we found that the "cellular market is a duopoly." We found that the underlying cellular services market is a duopoly. In making our finding that this market was a duopoly we took notice of the Federal Communications Commission's decision to create such a duopoly. Id. at 13.

We did not, as the movants have alleged, make any finding concerning whether or not a public need exists to regulate cellular service. The legislature found a public need to regulate public utilities when it enacted

Page 526

the statute. We simply interpreted the statute defining "public utilities" (RSA §362:2) to include underlying cellular service. The statute which requires the approval of the Public Utilities Commission for an entity to commence business as a public utility (RSA §374:22) is not, on its face, discretionary. Therefore, we made a conclusion that as a matter of law we are authorized and obligated to regulate underlying cellular service carriers.

For the above stated reasons we deny the motion to rehear based on insufficient findings of fact to support the decision. Phase I Order, at 20.

We do not consider it appropriate to hold the commission's decision on a motion for rehearing in abeyance until after resolution of the franchise, tariff, ratemaking and other issues. First, it would be a misuse of ratepayers money and administrative resources to move forward on these other proceedings if the movants intend to appeal our decision. Second, RSA §541:5 states that the commission shall within ten days of a motion to rehear, grant or deny the motion or suspend the order. There is no reason to suspend the effect of the order since it is grounded in sound findings of fact and conclusions of law. We, therefore, must grant or deny the motion within ten days. We, hereby, deny 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 October 13, 1987 motion Portsmouth Cellular Limited Partnership, JHP Partnership, and Manchester NECMA Limited Partnership for rehearing of Re Portsmouth Cellular Limited Partnership, Order No. 18,848, 72 NH PUC 445 (Sept. 24, 1987) be, and hereby is, denied.

By order of the Public Utilities Commission of New Hampshire this ninth day of November, 1987.

==========

72 NH PUC 527

Re Metromedia Telecommunications

DF 87-209
Order No. 18,904

New Hampshire Public Utilities Commission

November 10, 1987

ORDER requiring a utility to show cause why it should not be fined for failure to file a required annual report.

FINES AND PENALTIES, § 5 — Grounds for imposition — Violation of statute — Annual reports.

[N.H.] A telecommunications utility was required to show cause why a fine of $100 per day should not be imposed for its failure to file a complete annual report, in accordance with state statutes providing that every public utility must file reports containing facts and statistics as required, subject to a fine unless excused by the commission.

By the COMMISSION:

ORDER

WHEREAS, RSA 374:5 requires every public utility to file with the Commission reports containing facts and statistics as required by the commission; and

WHEREAS, the New Hampshire Code of Administrative Rules, Puc 607.06 and Puc 609.05 require inter alia the filing with the commission of annual reports which contain specified facts and statistics; and

WHEREAS, RSA 374:17 provides inter ialia that any public utility which does not file reports required by the commission at the time specified by the commission shall forfeit the sum of $100 per day unless excused by the commission; and

WHEREAS, Metromedia Telecommunications did not file a complete Annual

Report on March 31, 1987 for the year ended December 31, 1986; it is therefore

ORDERED, that Docket No. DF 87-209 is established for the purpose of determining whether Metromedia Telecommunications should be fined in an amount not to exceed $100 per day; and it is

FURTHER ORDERED, that Metromedia Telecommunications appear before the commission in a hearing at the offices of the commission, 8 Old Suncook Road, Building]1, Concord, New Hampshire at ten o'clock in the forenoon on November 17, 1987 to show cause why it should not be fined $100 per day for failure to file the required annual report.

By order of the Public Utilities Commission of New Hampshire this tenth day of November 1987.

==========

NH.PUC*11/10/87*[60391]*72 NH PUC 528*Holiday Ridge Supply Company, Inc.

[Go to End of 60391]

72 NH PUC 528

Re Holiday Ridge Supply Company, Inc.

DF 87-210
Order No. 18,905

New Hampshire Public Utilities Commission

November 10, 1987

ORDER requiring a utility to appear and show cause why it should not be fined for failure to file annual reports with the commission.

REPORTS, § 2 — Power to require — Effect of failure by public utility to file annual reports with the commission.

[N.H.] A utility was required to appear and show cause why it should not be fined for failure to file annual reports with the commission; the New Hampshire Code of Administrative Rules, Puc 607.06 and Puc 609.05 require public utilities to file annual reports with the commission and state statute RSA 374:17 provides that any utility which does not file reports required by the commission at the time specified by the commission shall forfeit the sum of $100 per day, unless excused by the commission.

By the COMMISSION:

ORDER

WHEREAS, RSA 374:5 requires every public utility to file with the commission reports containing facts and statistics as required by the commission; and

WHEREAS, the New Hampshire Code of Administrative Rules, Puc 607.06 and Puc 609.05 require inter alia the filing with the commission of annual reports which contain specified facts and statistics; and

WHEREAS, RSA 374:17 provides inter alia that any public utility which does not file reports required by the commission at the time specified by the commission shall forfeit the sum of $100 per day unless excused by the commission; and

WHEREAS, Holiday Ridge Supply Co., Inc. did not file a complete Annual Report on March 31, 1987 for the year ended December 31, 1986; it is therefore

ORDERED, that Docket No. DF 87-210 is established for the purpose of determining whether Holiday Ridge Supply Co., Inc. should be fined in an amount not to exceed $100 per day; and it is

FURTHER ORDERED, that Holiday Ridge Supply Co., Inc. appear before the commission in a hearing at the offices of the commission, 8 Old Suncook Road, Building]1, Concord, New Hampshire at nine o'clock in the forenoon on November 20, 1987 to show cause why it should not be fined $100 per day for failure to file the required annual report.

By order of the Public Utilities Commission of New Hampshire this tenth day of November 1987.

==========

NH.PUC*11/13/87*[60392]*72 NH PUC 529*Bert Spaulding, Sr. v. Public Service Company of New Hampshire

[Go to End of 60392]

72 NH PUC 529

Bert Spaulding, Sr.
v.
Public Service Company of New Hampshire

DC 87-168
Order No. 18,906

New Hampshire Public Utilities Commission

November 13, 1987

ORDER requiring a consumer to grant a limited easement to an electric utility as a condition on receipt of service.

SERVICE, § 177 — Factors affecting duty to extend — Grant of limited easement — Electric service.

[N.H.] Where the provision of business electric service to a consumer would require the placement of two poles on the consumer's property, the consumer was required to grant a limited easement over his property to the utility as a condition on receipt of service; in support of its decision to require the grant of an easement the commission found that (1) the building of a line over private property without an easement would put an unnecessary burden on future ratepayers

in that upon sale of the property the utility would be trespassing and might be required to remove the poles and lines at the expense of ratepayers, and (2) the tariff governing line extensions required the grant of an easement under circumstances where the company could become a trespasser upon the future disposition of the property.

APPEARANCES: Karen J. Emery, Esq. on behalf of Public Service Company of New Hampshire; Robert Backus, Esq. on behalf of Bert Spaulding, Sr.

By the COMMISSION:

REPORT

I. Procedural History

This docket was opened as a result of a complaint filed on August 19, 1987 by Bert Spaulding, Sr., RFD]1, Box 280, Claremont, N.H. 03743. According to the complaint, Mr. Spaulding requested business electric service from Public Service Company of New Hampshire (PSNH). The complaint states that such service would require the placement of two (2) poles on the complainant's land. PSNH has denied service to Mr. Spaulding because he will not facilitate the provision of service to his warehouse by granting an easement over his private property for the construction and maintenance of poles and wires. No formal answer was filed by PSNH. A hearing on the merits was held on October 15, 1987.

II. Positions of the Parties

Mr. Spaulding argued that he should not be required to grant an easement on his property. He argues that the tariff does not require an easement for the service he has requested. He interprets the language of the tariff to mean that he could give the company the permission or his consent to enter onto his property and that this would be all that is necessary under the tariff. He argues that PSNH can provide service without a recorded easement that would bind his successors in title. In addition, he argues that if he is required to provide an easement to take service that this is a taking of property without compensation in derogation of RSA Chapter 371.

Public Service Company of New Hampshire argues that it must have a recorded easement in order to have a satisfactory right-of-way under these circumstances. It avers that a license would not be sufficient since it does not affect the chain of title. PSNH argues further that the easement requested is not a blanket easement. It alleges that the easement has been so restricted as to only include such rights as are necessary for the construction and maintenance of this project. PSNH averred that the easement is necessary to protect the company and the ratepayers from

actions in trespass by Spaulding's assigns or successors in title.

The Staff of the Commission did not make an appearance at the hearing.

III. Findings of Fact

The commission makes the following findings of fact based on the record in this proceeding.

Mr. Spaulding has requested service from PSNH. During the course of the hearing it became apparent that the property in question actually belonged to Mr. Spaulding's wife. PSNH would be willing to provide service at the edge of the property, locating a meter at that point. However, Mr. Spaulding has decided not to take the service in this manner because it would require him to build his own line from the site of the meter to his building site. He has requested that the Company construct a facility that would allow him to take service at the building site.

The company considered three possible sites for the requested construction. One site was ruled out because the customer had filled his property, rendering the area too unstable for pole installation. The company ruled out the second possible site since it would require the company to obtain an easement from a neighbor of Spaulding's. The third site is the one favored by the company. The proposed site would place two forty (40) foot poles with three quarter inch anchors and wires on the customer's wife's property.

The company stated that it would not build the line and, thereby, provide service unless the customer provided an easement or recorded right-of-way over his property. The customer stated he would obtain for the company a license to enter, construct and maintain the facilities on the property that would bind his heirs but not his successors or assigns. He does not wish to obtain an easement and have it recorded.

IV. Commission Analysis

This complaint has presented us with three issues for decision. First, is an easement necessary for the provision of service in this case? Second, does the tariff require an easement? Third, must the company file a petition with the commission to take this easement by eminent domain?

In answer to the first question, we find that an easement is necessary for the provision of service in this case. The building of a line over private property without an easement would put an unnecessary burden on future ratepayers in that upon sale of this property PSNH would be trespassing on this property and might be required to remove the lines and poles at the expense of the ratepayers.

Concerning the second issue it is apparent that the language in the tariff ("permits, consents or easements") was intended to cover all possible situations encountered by the company, i.e., environmental permits, or other consents. The tariff language states that the rights to be provided by the customer shall be those necessary for the erection, maintenance and operation of the line. A license, since it would not run with the land, would not provide for continuous access as would be "necessary" for maintenance and operation of the line upon sale of the property. We interpret the tariff to require an easement under circumstances such as these where the company would be trespassing upon future disposition of the property.

In response to the third query we find that it is not necessary for the company to bring a petition for condemnation. The customer has a choice of complying with the terms of the tariff or doing without electric service. To protect the general ratepayer, the PSNH tariff, NHPUC Tariff No. 31, original page 17 concerning line extensions, provides that:

(1) an extension on private property will be made only if:

* * *

(b) the prospective customers provide, without expense or cost to the Company, the necessary permits, consents or easements for a satisfactory right-of-way for the erection, maintenance and operation of a line.

The Complainant has not fulfilled the conditions necessary to the provision of service as outlined in the tariff. Using either the proposed site or the alternate site proposed by Spaulding (where a line would run along a neighbor's property) Spaulding would need to acquire an easement on the property of his wife or his neighbor previous to the extension of service.

For the above stated reasons PSNH is not required to provide any service beyond the customer's wife's property line until the customer provides the requested easement.

Our order will issue accordingly.

ORDER

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

ORDERED, that Bert Spaulding Sr. is entitled to the service requested upon his provision of the limited easement required by Public Service Company of New Hampshire for the construction and maintenance of facilities.

By order of the Public Utilities Commission of New Hampshire this thirteenth day of November, 1987.

==========

NH.PUC*11/16/87*[60393]*72 NH PUC 531*Continental Telephone Company of Maine

[Go to End of 60393]

72 NH PUC 531

Re Continental Telephone Company of Maine

DF 87-214
Order No. 18,907

New Hampshire Public Utilities Commission

November 16, 1987

ORDER approving the issuance of a mortgage note by a local exchange telephone carrier.

SECURITY ISSUES, § 44.1 — Factors affecting authorization — Approval by other authority.

[N.H.] A local exchange telephone carrier was authorized to issue a mortgage note, to acquire funds for use in constructing facilities to connect additional subscribers and to make system improvements, because the carrier had relatively few customers and minimal plant and

telephone equipment in New Hampshire, and had already received approval from the commission of the state in which its principal operations were located.

By the COMMISSION:

ORDER

WHEREAS, Continental Telephone Company of Maine, (hereinafter Contel) is authorized to operate as a telephone public utility to a minor extent, in East Conway and Chatham in the County of Carroll and State of New Hampshire; and

WHEREAS, Contel, on November 2, 1987 filed an application for authority and approval, pursuant to R.S.A. 369:1, 7, of the issuance of a mortgage note in the amount of $5,250,000 to the Rural Telephone Bank. The note will have a maturity of thirty-five (35) years, and will bear an interest rate of seven (7) percent; and

WHEREAS, Contel's total mortgage indebtedness outstanding on December 31, 1986 was $13,314,277. Its total unsecured

Page 531

indebtedness as of the same date was $3,574,500; and

WHEREAS, Contel's purpose in issuing this $5.25 million note is to acquire funds to construct facilities to connect 5,083 additional subscribers and to make system improvements. The loan amount includes $250,000 for investment in Rural Telephone Bank Class B stock. The construction program will upgrade and modernize nineteen of the Company's forty-six (46) exchanges. Net construction costs are expected to be $14.5 million. The RTB funds will be used to finance the outside plant construction, and an additional $9.5 million of internal generated funds will cover central office and transmission costs; and

WHEREAS, Contel has already received approval from the State of Maine Public Utilities Commission of this financing pursuant to Order dated September 28, 1987; and

WHEREAS, Contel has relatively few customers and minimal plant and telephone equipment located in the State of New Hampshire; and

WHEREAS, the New Hampshire Public Utilities Commission believes that it is consistent with the public good to approve Contel's application; it is hereby

ORDERED, that Continental Telephone Company of Maine is hereby authorized to borrow a principal amount of $5,250,000 by the issuance of a note to the Rural Telephone Bank, at a rate not exceed seven (7) percent for a period up to thirty-five (35) years, in accordance with the terms, conditions, and purposes described in its application and supporting documentation ; and it is

FURTHER ORDERED, that Contel shall on January first and July first of each year, file with this Commission a detailed statement, duly sworn to by its Treasurer, showing the disposition of the proceeds of such Notes until the whole of such proceeds shall have been fully accounted for; and it is

FURTHER ORDERED, that this Order shall be effective 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 sixteenth day of November, 1987.

==========

NH.PUC*11/16/87*[60394]*72 NH PUC 532*Public Service Company of New Hampshire

[Go to End of 60394]

72 NH PUC 532

Re Public Service Company of New Hampshire

DE 87-212
Order No. 18,908

New Hampshire Public Utilities Commission

November 16, 1987

LICENSE to maintain an existing electric distribution line under and across public waters.

ELECTRICITY, § 6 — Wires and cables — License to maintain an existing distribution line.

[N.H.] After review of the installation of electric distribution lines across public waters disclosed that some crossings had not been initially licensed, an electric utility was granted a license to maintain an existing distribution line under and across public waters, because such water crossings were an integral part of the electric system and were necessary for the utility to meet its obligation to serve customers within its authorized franchise area.

By the COMMISSION:

ORDER

WHEREAS, on October 30, 1987, Public Service of New Hampshire (PSNH) filed with this commission, a petition pursuant to RSA 371:17-20 for a license to maintain an existing 2.4 KV distribution line under and across Island Pond from Governors Island to Escumbuit Island in Hampstead and Derry, New Hampshire; and

WHEREAS, in order to meet the requirements of service to the public, the petitioner must maintain electric distribution lines across certain public waters, which lines are an integral part of its electric system; and

WHEREAS, in order to discharge its obligations to the public to provide safe electric service, the petitioner has reviewed its installation of lines across public waters; and

WHEREAS, the review has disclosed instances where crossings have not been initially licensed; and

WHEREAS, this particular unlicensed underwater crossing was missed when the original survey of water crossings was done earlier this year by PSNH, and

WHEREAS, the location of the crossing the petitioner is seeking to license in this petition is indicated on submitted exhibit 1A1, and the design is shown on Exhibit 1A2; and

WHEREAS, the lines and supporting structures necessary for the subject crossing are to be maintained by the petitioner pursuant to existing easements; and

WHEREAS, the petitioned crossing is approximately 1390 feet in overall length and placed in approximately 35 feet of water; and

WHEREAS, the definition of "Public Waters" contained in the limited purposes of RSA 371:17 includes "all ponds of more than ten acres, tidewater bodies, and such streams or portions thereof as the Commission may prescribe"; and

WHEREAS, the commission prescribes the subject crossing to be under and across public waters; and

WHEREAS, the commission finds such water crossings necessary for the petitioner to meet its obligation to serve customers within its authorized franchise area, thus it is in the public interest; and

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

ORDERED, that all persons interested in responding to this petition be notified that they may submit their comments or file a written request for a hearing on the matter before this commission no later than November 30, 1987; and it is

FURTHER ORDERED, that the petitioner effect said notification by publication of this order once in The Union Leader. Such publication to be no later than November 23, 1987 and documented by affidavit to be filed with this office on or before December 7, 1987; and it is

FURTHER ORDERED, NISI that authority be granted, pursuant to RSA 371;17 et seq, to Public Service of New Hampshire to maintain and operate said 2.4 KV distribution line under and across the public waters of Island Pond in the Towns of Hampstead and Derry, in the State of New Hampshire; and it is

FURTHER ORDERED, that all construction meet the requirements of the National Electrical Safety Code and all other applicable safety standards; and it is

FURTHER ORDERED, that such authority shall be effective 20 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 sixteenth day of November, 1987.

72 NH PUC 533

Re Public Service Company of New Hampshire

DR 87-198
Order No. 18,909

New Hampshire Public Utilities Commission

November 16, 1987

ORDER making effective a special contract for electric service to one customer.

Page 533

RATES, § 321 — Electric — Special contract rates — Conditions on extension of service.

[N.H.] A special contract for the provision of service by an electric utility to one customer, a railway, was made effective, based on a determination that contract terms and conditions were just and consistent with the public interest; the estimated income from energy sales to the customer under the applicable rate was insufficient to warrant an expenditure needed to serve the customer's premises properly, but the utility required the customer to make a cash contribution toward the total construction cost of a line made necessary by the provision of service, and a telephone company would contribute for its half interest in the poles.

By the COMMISSION:

ORDER

WHEREAS, on October 19, 1987, Public Service of New Hampshire filed with this Commission Special Contract No. NHPUC52 in compliance with the Commission's Rules and Regulations, Chapter PUC 1600, Parts 1601.02 (c) and (e), and 1601.04 (e), for electrical service to one customer, the Cog Railway, Inc., under the provisions of Primary General Service Rate GV; and

WHEREAS, such service will require the construction of a 4.7 mile, 34.5 KV line beginning at Fabyan Station, extending along the Base Station Road and terminating at the Base Station; and

WHEREAS, the company has estimated that the income from energy sales to the customer under the applicable Rate GV will not be sufficient to warrant the expenditure necessary to

supply electric energy properly to the customer's premises; and

WHEREAS, the company is requiring the customer to make a cash contribution toward the $111,523 total construction cost of the line in the amount of $46,734, subject to final cost adjustment; and

WHEREAS, the telephone company will contribute for their half interest in the poles in the amount of $29,789; and

WHEREAS, Public Service of New Hampshire has requested that the normal fifteen day notice to the Commission be waived so that the line may be constructed before winter arrives; and

WHEREAS, in Docket DE 87-175, the Commission has approved the necessary franchise territory and authority to construct the line to serve the Cog Railway Base Station, and

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

ORDERED, that said contract shall become effective as of October 19, 1987.

By order of the Public Utilities Commission of New Hampshire this sixteenth day of November, 1987.

==========

NH.PUC*11/17/87*[60397]*72 NH PUC 537*Pennichuck Water Works, Inc.

[Go to End of 60397]

72 NH PUC 537

Re Pennichuck Water Works, Inc.

DE 87-132
Order No. 18,912

New Hampshire Public Utilities Commission

November 17, 1987

ORDER, in a water rate case, granting motion for continuance of the procedural schedule and denying a motion to strike prefiled testimony.

Page 537

RATES, § 648 — Procedure and practice — Evidence — Prefiled testimony.

[N.H.] The commission continued a procedural schedule, which had been established to allow parties to a water rate case an adequate opportunity to conduct discovery concerning

pre-filed testimony, because the testimony filed by a water utility omitted financial data that the utility did not intend to file until seven days before a scheduled hearing, possibly precluding adequate discovery, and because the testimony failed to indicate whether proposed rates were supported by the cost of service, a fundamental element of the burden of proving that the proposed rates were just and reasonable; the testimony was not stricken because no argument had been made that it contained anything immaterial or irrelevant.

By the COMMISSION:

REPORT ON MOTION TO STRIKE PREFILED TESTIMONY OF BONALYN J. HARTLEY AND TO CONTINUE PROCEDURAL SCHEDULE

I. Background

On October 16, 1987 Southern New Hampshire Water Co., Inc. ("Southern") filed a motion to strike the prefiled testimony of Bonalyn J. Hartley and to continue the procedural schedule. Southern alleges, among other things, that the prefiled testimony does not give it an adequate opportunity to cross-examine since the testimony omits financial data that is not intended to be filed until seven days before the hearing. It prays that the commission strike the prefiled testimony and continue the procedural schedule and hearing established by the Commission's Report Regarding Prehearing Conference and Order No. 18,837 (Sept. 16, 1987) until Pennichuck has filed its complete prefiled testimony.

On October 21, 1987 Pennichuck Water Works, Inc. ("Pennichuck") filed an objection to Southern's motion. Pennichuck objected to the motion based on the provision of the commission's Report Regarding Prehearing Conference and Order No. 18,837 (Sept. 16, 1987) that stated that supplemental testimony may be filed where matters are not known at the time of the filing of the direct testimony. It stated that the filing of financial data to set rates is premature until the evaluation of the Water Supply and Pollution Control Division of the Department of Environmental Services is complete and Pennichuck's plans for interconnection have been finalized on the basis thereof.

II. Commission Analysis

The purpose of the above cited language in Order No. 18,837 was to avoid the circumstances in which we now find ourselves. The petitioner agreed to a procedural schedule that it could not comply with. It filed testimony concerning its rates that did not contain a fundamental element of its burden of proof in this case, to wit, whether the rates proposed are supported by its cost of service and, consequently, whether the proposed rates are just and reasonable.

A hearing schedule was established in this proceeding to allow the parties an adequate opportunity to conduct discovery concerning the testimony filed. If the financial data is filed only seven days before the hearing this may not provide the parties with adequate discovery.

The commission does not find it necessary to strike the testimony in that Southern has not argued that there is anything irrelevant or immaterial therein. However, we do find it appropriate to continue the procedural schedule and the hearing in this case until the petitioner has complied with its burden of going forward.

Our order will issue accordingly.

ORDER

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

ORDERED, that the motion of Southern New Hampshire Water Co., Inc. to strike

Page 538

the prefiled testimony of Bonalyn J. Hartley is, hereby, denied; and it is

FURTHER ORDERED, that the motion by Southern for a continuance of the procedural schedule and the January 19, 1988 hearing is, hereby, granted.

By order of the Public Utilities Commission of New Hampshire this seventeenth day of November, 1987.

==========

NH.PUC*11/18/87*[60396]*72 NH PUC 534*Public Service Company of New Hampshire

[Go to End of 60396]

72 NH PUC 534

Re Public Service Company of New Hampshire

DR 87-151
11th Supplemental Order No. 18,911
New Hampshire Public Utilities Commission
November 18, 1987

REPORT and order reaffirming that an electric utility was required to respond more fully to requests for data pertaining to potential bankruptcy, but allowing more time for response.

PROCEDURE, § 16 — Production of evidence — Discovery — Relevancy.

[N.H.] An electric utility was required to respond to data requests asking for documents related to its potential bankruptcy and proposed debt restructuring as an alternative to bankruptcy, because the requests, although broad, were relevant to or reasonably calculated to lead to the discovery of admissible evidence.

Page 534

By the COMMISSION:

REPORT REGARDING MOTION TO REHEAR ORDER NO. 18,881 AND MOTION FOR ENLARGEMENT OF TIME

On October 28, 1987, Public Service Company of New Hampshire (PSNH) moved that the commission rehear and reconsider its report and Order No. 18,881 (72 NH PUC 509). On that same date, PSNH moved that the commission enlarge the time provided in Order No. 18,881 for PSNH to respond to the requirements of that order until the commission has disposed of the PSNH motion to rehear Order No. 18,881. Upon consideration of these motions, this report and the order attached hereto reaffirms the requirement that PSNH respond more fully to the data requests addressed in Order No. 18,881, but allows more time for that response.

To fully address these motions, the relevant factual background must be reconsidered. On September 4, 1987 the Campaign for Ratepayers Rights filed with the commission and, according to its filing, either hand delivered or mailed to PSNH, eight data requests. The first seven of those data requests asked for documents related to proposals, plans, projections and information that PSNH may have in its possession related to a potential PSNH bankruptcy. The eighth question asked for documents on proposals, plans and other information relating to PSNH's possible restructuring of its debt as an alternative to bankruptcy.

On September 11, 1987 PSNH filed a copy of its response to the CRR data requests with the commission and, according to its cover letter, distributed copies to CRR and the other parties. In its responses PSNH provided CRR with no information but instead provided the following objection to all eight data requests:

PSNH believes that the requested materials are not relevant to any material issue in this case nor are they reasonably calculated to lead to the discovery of relevant evidence. The issues in this case are whether there is an emergency confronting PSNH, whether the requested additional revenue will alleviate the emergency and whether the resulting rates will be just and reasonable. The premise, of this proceeding is that a utility's constitutional and statutory right to just and reasonable rates requires rates that afford a utility the opportunity to maintain or regain financial integrity, so long as the resulting rates are not exploitative. Bankruptcy is not an alternative or a substitute for just and reasonable rates for a utility.

Furthermore, PSNH believes that all of the requested materials are privileged from discovery as attorney work product, prepared in anticipation of a legal proceeding.

Accordingly, PSNH respectfully declines to provide the requested documents.

This response raises an objection of relevancy, i.e.: the requested materials are not relevant to any material in this case nor calculated to lead to the discovery of relevant evidence. This response also raises the objection of privilege as attorney work product.

On September 29, 1987 the CRR filed a motion to compel production of documents. On October 6, 1987, PSNH filed an objection to the CRR motion to compel which primarily restated the objections of the data request responses quoted above.

On October 21, 1987 the commission issued an order that granted the CRR motion on the grounds of relevancy, but provided PSNH with an avenue to further pursue its objection based on the attorney work product privilege.[1(131)] In that report and order, the commission stated that "the proposed data requests requested documents and materials related to plans and projections

PSNH has developed for a potential

bankruptcy". The commission overruled any relevancy objection to the data requests. The commission further provided that to the extent PSNH withholds information on grounds of attorney work product privilege, PSNH shall identify each and every document being withheld sufficiently to tell the following:

1. the document's author,

2. all known readers and possessors of the document,

3. the date of the document,

4. the number of pages of the document, and

5. the subjects discussed in the document.

The commission, in its order, set October 28, 1987 as the day for PSNH to respond and November 2, 1987 as the day for the Campaign for Ratepayer Rights to indicate to the commission what additional action, if any, the commission should take on its motion. Although that order has not been stayed or modified by the commission, no responses have been filed.

In the motion at hand, PSNH makes four arguments in support of its request for the commission to reconsider report and Order No. 18,881. These arguments are:

1. the decision contradicts the determinations of the commission "regarding the scope of these proceedings";

2. the decision places unreasonable burdens on PSNH to respond to the data requests;

3. the requested materials would be privileged from discovery in any event; and

4. the decision establishes an unreasonably short schedule for PSNH compliance.

Each of these arguments are addressed below.

As the commission indicated in its report and Order No. 18,881, the appropriate standard for relevancy with regard to discovery is whether the discovery request appears reasonably calculated to lead to the discovery of admissible evidence. This standard of relevancy for discovery is utilized in both the New Hampshire Superior Court Rule 36.b.(1) and the Federal Rules of Civil Procedure Rule 26(b). By the state and federal rules on discovery state that "it is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence." In contrast, PSNH inappropriately mixes the relevancy standard applicable to admission of evidence into the proceeding with the relevancy standard utilized for discovery.

The basic thrust of report and Order No. 18,881 and the commission finding today is that the questions asked by CRR appeared to have been reasonably calculated to lead to the discovery of admissible evidence. Looking at questions 1-7, the commission has allowed limited amounts of information on bankruptcy to be entered into the docket. In addition, potential plans and projections for PSNH operations in bankruptcy may include information relevant to consider PSNH's potential non-bankruptcy operation with restructured debt. Such information may be

reasonably related to the rate level necessary for PSNH. Thus, PSNH must respond to data requests 1-7 as indicated in report and Order No. 18,881.

CRR data request no. 8 does not ask about bankruptcy materials but instead, as discussed above, requests materials and information relating to restructuring PSNH's debt as an alternative to bankruptcy. Testimony presented by PSNH witness Harrison in this case indicates that the anticipated restructuring of the PSNH debt as well as other PSNH costs will result in a need for current rates plus an emergency surcharge of approximately 70.98 million from NHPUC jurisdictional customers. He further testified that delays or failure to achieve various steps, including the proposed debt restructure, will require a higher surcharge. Thus, the PSNH debt restructure, the timing of it and other PSNH actions are linked to the rate relief requested

Page 536

in this case. If there are debt restructure alternatives, those alternatives are likely to be relevant to the PSNH opinion on its need for rate relief. Furthermore, the extent to which there are alternatives to the financing of PSNH, those alternatives are relevant to finding the rate level that should be set for the company. The relevancy exists because reasonably incurred financing costs are necessarily a component considered in setting rates.

The commission agrees with PSNH that the CRR data requests 1-8 are broad. Nevertheless, as discussed above, they seem designed to produce production of material which clearly seems relevant to necessary rate relief. PSNH has asked similarly broad data requests in this docket related to the prefiled testimony of Witness Whitman and asked the commission to compel answers to them. Thus, based on the foregoing discussion, the commission rejects the PSNH reassertion of the relevancy objection for data requests 1-8.

The commission relies on its previous order and shall not further reconsider the issues addressed therein.

Finally, the PSNH motion for enlargement of time to respond to CRR data requests, and the PSNH motion for rehearing and reconsideration of report and Order No. 18,881, request more time for PSNH to comply with Order No. 18,881. The commission has required relatively fast response times and actions of all parties throughout this proceeding in its attempt to grant PSNH's request for expeditious treatment of this docket as a whole. In consideration of all the circumstances surrounding this matter, the commission shall extend the dates indicated in report and Order No. 18,881 such that PSNH's responses of data requests 1-8, to the extent not responded to at this time, shall be due 15 days from the issuance of this order.

Our order will issue accordingly.

Dissenting Opinion of Commissioner Bruce B. Ellsworth

For the reasons stated in Report and Eighth Supplemental Order No. 18,881 dated October 21, 1987 (72 NH PUC 509), I do not join with the majority.

SUPPLEMENTAL ORDER

Based upon the foregoing REPORT REGARDING MOTION TO REHEAR ORDER NO. 18,881 (72 NH PUC 509) AND MOTION FOR ENLARGEMENT OF TIME, which is

incorporated herein by reference, it is

ORDERED, that the PSNH Motion for Rehearing and Reconsideration of Report and Order No. 18,881 filed October 28, 1987 and the PSNH Motion for Enlargement of Time to Respond to CRR Data Requests filed October 28, 1987 are granted in part and denied in part as detailed in the forgoing report.

By order of the Public Utilities Commission of New Hampshire this eighteenth day of November, 1987.

FOOTNOTES

[1]The order on the CRR motion also included general discussion of the discovery process.

==========

NH.PUC*11/18/87*[60398]*72 NH PUC 539*Public Service Company of New Hampshire

[Go to End of 60398]

72 NH PUC 539

Re Public Service Company of New Hampshire

DR 87-197
Second Supplemental Order No. 18,913
New Hampshire Public Utilities Commission
November 18, 1987

ORDER adopting a procedural schedule for consideration of the implementation of a proposed winter interruptible electric service rate.

RATES, § 640 — Procedure — Adoption of procedural schedule — Winter interruptible electric rates.

[N.H.] A procedural schedule for consideration of the implementation of a proposed winter interruptible electric service rate was adopted; the parties had stipulated to the procedural schedule and the commission found that the schedule was reasonable.

APPEARANCES: Margaret Nelson, Esquire on behalf of Public Service Company of New Hampshire; Larry Eckhaus, Esquire on behalf of the Consumer Advocate; Mary Hain, Esquire on behalf of Staff of the New Hampshire Public Utilities Commission.

By the COMMISSION:

REPORT REGARDING A WINTER INTERRUPTIBLE RATE AND PROCEDURAL SCHEDULE

On October 19, 1987 Public Service Company of New Hampshire (PSNH) filed proposed Supplement No. 3 to NHPUC No. 31 — Electricity, establishing Winter Interruptible Service Rate WI for effect during the months of December 1987 and January and February 1988. On October 22, 1987 the Consumer Advocate filed a notice of intervention. By Order No. 18,786 (November 2, 1987) the commission suspended the proposed Winter Interruptible Service Rate WI and set November 12, 1987 as the date for a prehearing conference on the proposed Supplement to Rates GV and TR. As a result of that proceeding, the parties stipulated to a procedural schedule. The commission, via this report and order, accepts the settlement on the following procedural schedule:

Procedural Schedule

November 17, 1987 Prehearing conference (1:30 p.m.) to narrow the issues November 23, 1987 Hearing (10:00 a.m.)

The commission finds this procedural schedule reasonable and adopts it for purposes of this proceeding.

The commission shall not at this time order that the parties report on the results of their conference to narrow issues. However, the commission would appreciate a written communication from the parties indicating which issues are or are not contested. The statement of the issues may be designated as "non-binding", as the commission is interested in being informed as to the issues to be raised and does not intend to restrict the scope of the proceeding based on the filings.

Our Order will issue accordingly.

SUPPLEMENTAL ORDER

Based upon the foregoing Report Regarding Permanent Rates and Procedural Schedule, it is

ORDERED, that the procedural schedule and directions discussed in the foregoing Report shall govern this proceeding.

By order of the Public Utilities Commission of New Hampshire this eighteenth day of November, 1987.

==========

NH.PUC*11/18/87*[60400]*72 NH PUC 540*Lakeland Management Utility, Inc. (Water Utility)

[Go to End of 60400]

72 NH PUC 540

Re Lakeland Management Utility, Inc. (Water Utility)

DE 87-111
Order No. 18,915

Re Lakeland Management Utility, Inc.
(Sewage Disposal)

DE 87-112
Order No. 18,915

New Hampshire Public Utilities Commission

November 18, 1987

ORDER conditionally granting a petition to establish a water utility and a sewer disposal utility and establishing temporary rates for both utilities.

---

1. CERTIFICATES, § 125 — Establishment of a water utility and a sewer utility — Factors affecting grant — Ability to serve — Need for service — Conditions on grant.

[N.H.] A petition to establish a water utility and a sewage disposal utility was conditionally granted where the record evidence showed that there was a need for the service and that the petitioner was able to provide the service; however, final approval was withheld pending the results of negotiations with one of the cities to be served and receipt of a description of the proposed franchise area. p. 541.

2. RATES, § 630 — Temporary rates — Grounds for granting — Water utility and sewage disposal utility.

[N.H.] A request by a water utility and a sewage disposal utility for the establishment of temporary rates at current rate levels pending the results of a permanent rate proceeding was granted as in the public interest where no customer group objected; the grant of temporary rates was issued pursuant to RSA 378:27, which permits the commission to grant temporary rates to protect utilities against confiscatory rates. p. 541.

APPEARANCES: Dom D'Ambruoso, Esq. of Ransmeier & Spellman for Lakeland Management company, Inc.; Edward Fitzgerald and Murray Dean, for Granite Ridge Condominium Association; James Lenihan, Dr. Edward Schmidt, Daniel Lanning, Robert Lessels for the Staff of the Public Utilities Commission.

By the COMMISSION:

REPORT

I. PROCEDURAL HISTORY

On June 15, 1987 Lakeland Management Company, Inc. (Lakeland or the company) filed a petition to establish a water utility and a sewage disposal utility in a limited area in the Town of Belmont and the City of Laconia, New Hampshire pursuant to RSA 374:22 and 374:26. In addition, Lakeland filed a petition to establish temporary rates for both utilities.

On August 25, 1987 the commission held a duly noticed prehearing conference and subsequent hearing wherein motions for intervention by The Orchard at Plummer Hill

Condominium Association and Granite Ridge Condominium Association were submitted. Subsequently, the commission issued its Order No. 18,839 approving said motions and accepting the procedural schedule proposed by the parties (72 NH PUC 434).

In accordance with the approved procedural schedule the commission held a hearing on the merits of the franchise request and temporary rates. The company presented one witness and fifteen exhibits, Granite Ridge Condominium Association presented three witnesses. The Orchard at

Page 540

Plummer Hill Condominium Association did not make an appearance.

II. POSITION OF THE PARTIES

Lakeland took the position that its petition should be granted. The staff and Granite Ridge Condominium Association did not oppose the petition.

III. FINDING OF FACTS

During the hearing the company presented evidence that it has been providing both water and sewer service for a number of years. This service has been adequate.

IV. COMMISSION ANALYSIS

[1] In Re New Hampshire Yankee Electric Corp., DF 84-339, Report and Order No. 17,690 at 5, 70 NH PUC 563 (June 27, 1985) the commission stated our criteria for determining "the public good" when authorizing an application for a utility required under RSA 374:26, as: 1) the need for the service and 2) the ability of the applicant to provide the service. Lakeland gave evidence that it has been providing the proposed services for a number of years. The record shows that service provided has been adequate and has been approved by various state agencies. This satisfies the second part of the criteria. The intervenors clearly stated their desire to have the franchise approved, indicating a need for the service.

Based on these factors the commission will permit Lakeland to establish a water and sewer utility within a limited area of the Town of Belmont, New Hampshire, pursuant to RSA 374:22. However, this approval does not include the franchise territory in the limited area of the City of Laconia, New Hampshire. The company indicated that it was in the process of negotiating terms with the city concerning water and sewer service in this area. Laconia has stated its desire to own and operate the system within its city limits. The Commission will hold the approval of this franchise area in abeyance for a reasonable amount of time to allow negotiation of a solution.

Finally, the commission notes that the company's petition does not provide a description of the proposed franchise area. Absent an adequate description of the area to be served this commission cannot grant the franchise. Accordingly, the commission approves the application conditioned upon receipt of the required descriptive outline of the franchise area.

V. TEMPORARY RATES

[2] Pursuant to RSA 378:27, the company submitted evidence supporting temporary rates. Company Exhibit 8, presents a Report of Proposed Rate Changes providing for temporary rates at current rate levels. According to company Exhibit 11, these rates will generate a substantial

loss.

Under cross-examination by staff and the commission the company witness revealed that its estimated revenue, as shown on Exhibit 8, had been understated. As per the company witness testimony, two commercial customers had been omitted. Additionally, the witness indicated that annual salaries of $6,000 and $4,000 were estimated for the company president and bookkeeper (water and sewer combined).

It was stated that the annual salaries were for monitoring the water and sewer system and billing of customers. Billing of customers entailed issuing six bills four times a year (T.52-54). Currently only one customer is metered. This indicates that the other five customers are billed on a flat rate which requires minimal, if any, bill calculation. Further the company has estimated a cost of $400 for accounting costs. The cost of $4,400 a year in accounting and bookkeeping fees is in excess of what is considered reasonable for the amount of labor evidenced during the hearing.

These and other revenue and expense matters are more appropriately reviewed and litigated during the permanent rate proceeding. The New Hampshire Supreme

Court of has stated that this commission's authority under RSA 378:27 was to protect utilities against confiscatory rates New Hampshire v. New England Teleph. & Teleg. Co., 103 N.H. 394, 40 PUR3d 525, 173 A.2d 728 (1961). In this instance the company has requested rates equal to the rates currently charged its customers. Neither of the two intervening customer groups have objected to the rate proposed.

Since the evidence showing a revenue shortfall omitted two large customers, the company neglected to show, by a preponderance of the evidence that the temporary rates would be less than compensatory. In light of the above, we find that the public interest is served by allowing the proposed temporary rates to become effective as of the date of this Order. (See also Re Concord Steam Corp., DR 85-304 Report and Order No. 17,893, 70 NH PUC 840 [1985].) The issues discussed above are to be addressed by the company in its permanent rate filing.

VI. Procedural Schedule

The final matter to be resolved is the procedural schedule for permanent rates. Lakeland requested a postponement of the procedural schedule. The parties to the docket did not object to this request.

In a letter dated October 14, 1987 the company proposed the following schedule:

12/18 Lakeland will file data to support a permanent rate increase
1/8 Staff and intervenor data requests
1/22 Lakeland's responses
2/5 Staff and intervenor testimony, if any
2/12 Lakeland's data requests
2/19 Conference of the parties to narrow issues

2/26 Staff and, intervenor responses to
Lakeland's data requests
3/3 Commission hearing

This appears to be a reasonable schedule, therefore, we shall approve it 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 Lakeland Management Utility, Inc. — Water and Lakeland Management Utility, Inc. — Sewer's petition for a franchise in the Town of Belmont, New Hampshire be, and hereby is, approved conditionally pending receipt of the required descriptive outline of said franchise area; and it is

FURTHER ORDERED, that Lakeland Management Utility, Inc. — Water and Lakeland Management Utility, Inc. — Sewer be, and hereby is, granted temporary rates as of the date of this Order and that temporary rates be fixed at the level in said utilities application; and it is

FURTHER ORDERED, that the procedural schedule in these dockets is hereby modified as set forth in the accompanying Report.

By order of the Public Utilities Commission of New Hampshire this eighteenth day of November, 1987.

==========

NH.PUC*11/18/87*[60401]*72 NH PUC 542*Gas Service, Inc.

[Go to End of 60401]

72 NH PUC 542

Re Gas Service, Inc.

Additional party: Concord Natural Gas Corporation

DE 86-268
Third Supplemental Order No. 18,916

New Hampshire Public Utilities Commission

November 18, 1987

ORDER requiring two natural gas distribution utilities to incorporate construction inspection procedures in their operating and maintenance plans.

GAS, § 5.1 — Construction and equipment — Safety procedures — Natural gas distribution utilities.

[N.H.] Two natural gas distribution utilities were ordered to incorporate certain construction inspection procedures in their operating and maintenance plans; the commission had reviewed the procedures and found them to be acceptable and in the best interest of gas safety.

By the COMMISSION:

SUPPLEMENTAL ORDER

WHEREAS, Gas Service, Inc. and Concord Natural Gas Corporation were ordered in Report and Order No. 18,637 to investigate their construction procedures and identify those practices which shall be specifically inspected (72 NH PUC 149); and

WHEREAS, in said order the commission provided, inter alia, that the above-cited practices and procedures shall be included in the Companies operating and maintenance plan subsequent to Commission review; and

WHEREAS, the Commission has reviewed those practices and find them to be acceptable and in the best interest of gas safety; it is

ORDERED, that the companies incorporate those practices in their operating and maintenances plan.

By order of the Public Utilities Commission of New Hampshire this eighteenth day of November, 1987.

==========

NH.PUC*11/20/87*[60402]*72 NH PUC 543*Nuclear Emergency Response Planning

[Go to End of 60402]

72 NH PUC 543

Re Nuclear Emergency Response Planning

DE 87-225
Order No. 18,917

New Hampshire Public Utilities Commission

November 20, 1987

ORDER assessing costs incurred by the New Hampshire Civil Defense Agency in the preparation, implementation and maintenance of radiological emergency response plans against an electric utility.

ATOMIC ENERGY — Radiological emergency response planning — Cost assessment — Electric utility.

[N.H.] Pursuant to the authority granted to the chairman of the commission by state statute RSA 107-B, costs incurred by the New Hampshire Civil Defense Agency in the preparation, implementation and maintenance of radiological emergency response plans for the Seabrook nuclear plant were assessed against the electric utility operator of the plant; the chairman found that the costs requested were related to preparing the plan and providing equipment and materials to implement it.

By the COMMISSION:

REPORT

On October 22, 1987, the New Hampshire Civil Defense Agency (Civil Defense) submitted a request for an assessment in the amount of $73,924 against New Hampshire Yankee Division of Public Service Company of New Hampshire. The purpose of this assessment is to provide the necessary personnel required by the Department of Public Health to fulfill their responsibility in the preparation, implementation and maintenance of the Radiological Emergency Response Plans for the Seabrook Emergency Planning Zone.

Page 543

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: Hollingsworth v. New Hampshire Civil Defense Agency, 122 N.H. 1028, 453 A.2d 1288 10(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 Plans.

After review of the request made and the materials presented therewith, I find that the sum requested is necessary for the completion, maintenance and implementation of the plan.

Therefore, I approve the request for an assessment of $73,924 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 $73,924 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 twentieth day of November, 1987.

==========

[Go to End of 60403]

72 NH PUC 544

Re Claremont Gas and Light Company

DR 87-203
Order No. 18,919

New Hampshire Public Utilities Commission

November 25, 1987

APPLICATION by gas utility to apply a surcharge credit to its cost-of-gas adjustment; granted.

AUTOMATIC ADJUSTMENT CLAUSES, § 28 — Gas costs — Decrease in costs — Use of credits.

[N.H.] A gas utility was allowed to decrease its winter cost-of-gas adjustment through implementation of a surcharge credit.

By the COMMISSION:

ORDER

WHEREAS, Claremont Gas & Light Company/SG Propane of New Hampshire, on November 19, 1987, filed with this Commission certain revisions of its tariff providing for the Winter Cost of Gas Adjustment for the period November 1, 1987 through April 30, 1988 requesting a surcharge credit of (14.475/therm), decreasing the previously established summer cost of gas rate by 17.44/therm; and

WHEREAS, Claremont failed to file a timely cost of gas adjustment pursuant to commission policy; and

WHEREAS, it was in the public interest to conduct a hearing on the matter expeditiously to allow an appropriate rate to be established for effect as ordered by the commission; and

WHEREAS, a hearing on the matter was accordingly held on November 23, 1987 without prior public notice, at which the CGA request was amended to a surcharge credit of (7.27¢/therm); and

Page 544

WHEREAS, the requested rate reduction is reasonable and in the public good; it is

ORDERED, NISI that the amended request for winter cost of gas adjustment for the period November 1, 1987 through April 30, 1988 is granted; and it is

FURTHER ORDERED, that pursuant to Puc Rule No. 203.01, said petitioner notify all persons of the above referenced filing, by causing an attested copy of this Order of Notice to be published once in a newspaper having general circulation in that portion of the State in which operations are conducted, such publication to be not later than November 30, 1987, said publication to be designated in an affidavit to be made on a copy of this Order of Notice and filed with this office on or before December 4, 1987, and any interested party may request further hearing in this matter on or before December 4, 1987; and it is

FURTHER ORDERED, that this order will become effective on December 4, 1987, retroactive to November 1, 1987, unless there is a request for a hearing as provided above.

By order of the Public Utilities Commission of New Hampshire this twenty-fifth day of November, 1987.

==========

NH.PUC*11/25/87*[60404]*72 NH PUC 545*Portsmouth Cellular Limited Partnership

[Go to End of 60404]

72 NH PUC 545

Re Portsmouth Cellular Limited Partnership

DE 87-126
Order No. 18,921

New Hampshire Public Utilities Commission

November 25, 1987

APPLICATION by cellular mobile telephone carrier for authority to conduct business in the state; granted.

SERVICE, § 451.2 — Telephone — Cellular mobile service — Factors affecting authorization.

[N.H.] A cellular mobile telecommunications service provider was authorized to commence business in the state where a public need for the service had already been demonstrated by virtue of a federal license grant, and where the entity had the requisite financial, technical, and managerial abilities to render adequate and reliable service.

APPEARANCES: George Michaels, Esq. of Edwards & Angell on behalf of Portsmouth Cellular Limited Partnership; Dom S. D'Ambruoso, Esq. of Ransmeier and Spellman on behalf of JHP Partnership; Thomas C. Platt, III, Esq. of Orr and Reno on behalf of Manchester NECMA Limited Partnership; Mary C.M. Hain, Esq. and Daniel D. Lanning on behalf of the Staff of the Public Utilities Commission.

By the COMMISSION:

REPORT ON DE 87-126, PHASE II — PERMISSION TO COMMENCE BUSINESS AS A PUBLIC UTILITY.

This report concerns the petition of Portsmouth Cellular Limited Partnership for permission to commence business as a public utility. The report details the procedural history of the case. It provides findings of fact and law concerning the petition. This report and order allows the petitioner to provide service subject to our approval of appropriate rates.

I. Procedural History

On June 29, 1987, the Portsmouth Cellular Limited Partnership (Portsmouth or the Partnership) petitioned for exemption from regulation by the New Hampshire Public Utilities Commission (PUC or the commission) or in the alternative, for permission to commence business as a nonwireline carrier of cellular mobile telecommunications service for the

Page 545

Portsmouth-Dover-Rochester, New Hampshire/Maine, New England County Metropolitan Area ("NECMA"), pursuant to RSA §374:22 (1984). The commission issued an order of notice on July 8, 1987 opening Docket DE 87-126 to investigate the applicant's petition.

The Order of Notice scheduled a prehearing conference for August 11, 1987 to consider bifurcation of the proceedings as follows: Phase I - a generic proceeding to consider whether the commission has authority to regulate cellular service, and Phase II - a specific proceeding to consider whether the engaging in business or exercise of right, privilege, or franchise of Portsmouth Cellular Limited Partnership to construct and operate a cellular mobile telephone system in the New Hampshire portion the of Portsmouth — Dover New England Co

unty Metropolitan Area (NECMA) is in the public good pursuant to RSA §374:26 (1984).

On July 3, 1987, Starcellular applied pursuant to said statute for permission to commence business as a public utility. On July 15, 1987, JHP Partnership ("JHP") also applied for permission to commence business as a public utility. The Manchester NECMA Limited Partnership ("Manchester") applied on August 13, 1987 for permission to commence business as a public utility. All of the petitions were to provide cellular telephone service.

Pursuant to Order No. 18,778 in Docket DE 87-137 and Order No. 18,777 in Docket DE 87-136 (72 NH PUC 339) Starcellular and JHP Partnership were required to be mandatory parties in Phase I of Portsmouth Cellular Limited Partnership, Docket DE 87126. At the prehearing conference on August 11, 1987 Nynex Mobile Communications Company ("NYNEX") and Manchester NECMA Limited Partnership were granted motions to intervene. Oral motions pro hac vice were also made by Alan Bouffard, Harold Carroll, David Fazzone, Rita Campanile, and Edward Hall. The commission granted the motions from the bench under N.H. Admin. Puc §201.3.

By Report and Order No. 18,804 the commission approved procedural schedules which provided that memoranda of law on the question of the authority of the Public Utilities Commission to regulate cellular telephone activities in New Hampshire should be filed on August 25, 1987 (72 NH PUC 370). The parties agreed at the prehearing conference that the

proceedings should be bifurcated and that Phase I should be a generic proceeding which would produce an order applicable to all the parties to determine the issue of commission jurisdiction. Memoranda of law were timely filed.

On September 24, 1987 the commission issued Report and Order No. 18,848 in Phase I finding that it has authority to regulate cellular mobile radio telephone service (72 NH PUC 445). Motions to rehear the decision in Phase I were filed on October 13, 1987 by JHP Partnership, Manchester NECMA Limited Partnership and the petitioner. By Order No. 18,903 issued November 7, 1987 the commission denied the motions (72 NH PUC 525).

A duly noticed hearing on the merits of the petition for permission to operate as a public utility took place on September 21, 1987. At the hearing an oral motion pro hac vice was made by George Michaels. The commission granted the motion from the bench.

II. Positions of the Parties

The Partnership took the position that it is managerially, financially, and technically capable of providing service and that the Federal Communications Commission (F.C.C.) has already determined that there is a public need for the proposed service. Portsmouth also argued that it should not be required to defer provision of service until such time as the other provider of cellular service in its NECMA is ready to provide service. The staff did not take a position as to Portsmouth's capability.

The commission staff raised the issue through cross-examination of whether there were any interlocking directorates among the partnership and the various management and development corporations

providing service to the partnership. It also questioned whether the company had appropriately brought the matter of the proposed change in ownership to the commission's attention.

III. Findings of Fact

The commission makes the followings findings of fact based on the record in this proceeding.

Portsmouth Cellular Limited Partnership is a New Hampshire limited partnership. It is owned by Chin Enterprises, Inc., the general partner that owns a 50.1% interest and by 151 limited partners who own a 49.99% interest. Chin Enterprises, Inc. has entered into an acquisition agreement by which it will become a wholly-owned subsidiary of BCG of Portsmouth, Inc., upon F.C.C. approval. BCG of Portsmouth, Inc. has also agreed to purchase the interests of 46 of the 151 limited partners. BCG of Portsmouth Inc. is a wholly-owned subsidiary of the Boston Communications Group, Inc. (a holding company). Boston Communications Group, Inc. also owns BCG Management Inc.

The Petitioner holds a permit from the Federal Communications Commission (F.C.C.) issued March 23, 1987 for the construction of a cellular mobile radio telecommunications system for the proposed service area.

BCG Management Inc. will provide construction and management services to Portsmouth under a management agreement. Yankee Celltell Company d/b/a Cellular One (a wholly-owned subsidiary of Metromedia Telecommunications, Inc.) will provide engineering, maintenance, and support services to Portsmouth under contract.

Employees of Portsmouth will be hired, supervised and trained by BCG Management, Inc. pursuant to the management agreement. Portsmouth will hire a General Manager who will supervise a Sales Manager and an Office Manager. The Sales Manager will supervise the Sales Representatives. The Office Manager will supervise the Customer Service Representative and the Secretary/Receptionist. The General Manager will provide the accounting functions. Customer service mechanisms for order processing, bill inquiries and problems have been proposed. BCG Management, Inc. has managerial experience concerning the operation of cellular mobile telephone service through its existing cellular service in Massachusetts.

The construction and initial operations financing has been obtained in the form of a bank loan from the Bank of New England. There is initially no equity contribution by the partners except the value of the F.C.C. permit. The loan will be repaid from operating revenues and capital calls to partners.

There will be 12 technical staff persons, managed by the Director of Operations and assisted by two technical supervisors. One supervisor will serve the switching center and one will serve the cell site. Service personnel will have fully equipped service vehicles, furnished with cellular test equipment. Installation and maintenance personnel shall be trained in Motorola's training programs. On-going training programs will be held.

The mobile telecommunications switching office (MTSO) switch will be tested and inspected every day. An alarm system will also alert the service personnel that a cellsite or a voice channel is out of service. In addition several other alarms and self-diagnostic aids, as further delineated in Exhibit I of Exhibit 3 may be utilized to spot problems before they affect service. Redundant processors will also be utilized to enhance system reliability.

Customer service problems will be handled by customer service representatives during business hours and by operators during non-business hours. Technical staff will be on call twenty-four hours a day for emergency service.

The witness for the partnership testified that there are no interlocking directorates. He also stated that the transfer of ownership of the partnership was part of the original petition.

Page 547

IV. Commission Analysis

The petitioner has requested pursuant to RSA §§374:22 and 26, that the commission grant it permission to engage in the business of providing cellular mobile radio telecommunications service and to construct a cellular system to provide such service. The language of RSA §374:26 states that permission shall be granted only if it would be "for the public good and not otherwise." In Re New Hampshire Yankee Electric Corp., DF 84-339, Report and Order No. 17,690, 70 NH PUC 563 (June 27, 1985) at 5, we stated our criteria for determining the public good as: 1) the need for the service, and 2) the ability of the applicant to provide the service. In

addition, a business must be organized under the laws of the State of New Hampshire to receive the commission's permission under RSA §374:24.

In Order No. 18,848 at 15, we found that the F.C.C. has preempted the determination of need and the market structure and has permitted state certification programs that do not interfere with the "competitive market structure." Re An Inquiry into the Use of Bands 825-845 MHz and 870-90 MHz for Cellular Communications Systems, CC Docket No. 79-318, 86 F.C.C.2d 469, 503505. Therefore, we are left only with the consideration and determination of the applicant's ability to provide the service.

The standard of fitness in fulfilling the public interest includes such criteria as

(1) financial backing; (2) management and administrative expertise; (3) technical resources; and (4) the general fitness of an applicant. Re International Generation and Transmission Co., Inc., 67 NH PUC 478, 484 (1982).

Based on the foregoing findings of fact we find that Portsmouth has demonstrated its financial, managerial, legal, and other ability to provide service and construct facilities to provide the service. Portsmouth has also shown that it is organized under the laws of the State of New Hampshire. Consequently, we find it in the public good to grant the partnership's petition contingent upon our approval of service rates.

Although the petitioner submitted a tariff with its testimony, no public notice was given of the proposed rates and inadequate tariff support material was submitted. We have been informed that the petitioner will be correcting these inadequacies. Since Portsmouth may not begin to provide service until tariffs have been approved we will defer our consideration of the simultaneous start-up issue until we consider the appropriate effective dates for the tariffs.

We would also like to remind Portsmouth that RSA §366:1 et. seq. applies to it on its face. Therefore, all management and service contracts, the consideration for which exceed $500 between the utility and an affiliate, as described therein shall be filed within ten (10) days of execution or be unenforceable.

Under §374:30 a public utility may transfer its franchise, works, or system and contract for the operation thereof only if the commission finds the transfer or contract in the public good and issues an order accordingly. In this case, Portsmouth proposed to do both in the alternative. First, it proposed to contract with BCG management for the operation of its system and to contract with. Second, it proposed to transfer ownership of its franchise and assets via a contract to purchase 100% of the General Partner's interest to BCG Management subject to F.C.C. approval. BCG management has already been determined to be able to construct, manage, and operate a utility. The management contract is an armslength transaction.

Our order will issue accordingly.

ORDER

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

ORDERED, that Portsmouth Cellular Limited Partnership be, and hereby is, granted permission to do business as the

nonwireline carrier of cellular radio telecommunications services in the PortsmouthDover-Rochester New Hampshire/Maine New England County Metropolitan Area contingent upon our approval of rates for service; and it is

FURTHER ORDERED, that pursuant to RSA §374:15 Portsmouth submit all the filings and reports as the New Hampshire Public Utilities Commission shall from time to time find required for the commission to comply with its duty to keep informed pursuant to RSA §§374:4, 374:5 and its prerogative to require accounting systems, depreciation accounts and the filing of reports under §§374:8, 10, and 15 respectively, and that pursuant to RSA §363-A:1, et seq., Portsmouth pay all assessments levied upon the company by the New Hampshire Public Utilities Commission, based on the amount of revenues received as a result of doing business in New Hampshire.

By order of the Public Utilities Commission of New Hampshire this twenty-fifth day of November, 1987.

==========

NH.PUC*12/01/87*[60405]*72 NH PUC 549*Public Service Company of New Hampshire

[Go to End of 60405]

72 NH PUC 549

Re Public Service Company of New Hampshire

DR 87-202
Order No. 18,922

New Hampshire Public Utilities Commission

December 1, 1987

PETITION for approval of a special interruptible electric rate contract; granted.

RATES, § 321 — Electric — Interruptible service — Special rate contract — Purpose.

[N.H.] Approval was given to a special interruptible rate contract executed by an electric utility and a state agency to be applicable to snowmaking activities.

By the COMMISSION:

ORDER

WHEREAS, on October 22, 1987 Public Service Company of New Hampshire (PSNH) filed special contract no. NHPUC53 — a special contract between Public Service Company of New Hampshire and the State of New Hampshire Department of Resources and Economic

Development for interruptible electric service for snowmaking at rates other than those fixed in PSNH's generally applicable rate schedules; and

WHEREAS, special circumstances exist which make the contract's departure from the general schedules just and consistent with the public interest pursuant to RSA 378:18 (1984); it is hereby

ORDERED, that the contract is approved for effect on the first day of December, 1987.

By order of the Public Utilities Commission of New Hampshire this first day of December, 1987.

==========

NH.PUC*12/01/87*[60406]*72 NH PUC 549*Public Service Company of New Hampshire

[Go to End of 60406]

72 NH PUC 549

Re Public Service Company of New Hampshire

DR 87-197
Third Supplemental Order No. 18,923
New Hampshire Public Utilities Commission
December 1, 1987

PETITION for a winter interruptible service rate; granted as amended.

---

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

[N.H.] The commission approved terms and conditions of two alternative winter interruptible electric rate programs designed to enable the

Page 549

utility to meet its responsibility to have peak load available to the New England Pool system. p. 552.

2. PROCEDURE, § 16 — Discovery and inspection — Protective orders — Exceptions to public disclosure — Competitive injuries — Protection of public interest.

[N.H.] Where granting a protective order the commission weighed the benefits of disclosure against the benefits of nondisclosure and ruled that since all of the parties had access to the confidential competitive information, such access was adequate to protect the public interest in disclosure without the corresponding competitive injury to the utility that may have resulted from public disclosure; since a revenue loss was likely to result from disclosure and ratepayers would ultimately bear that loss, nondisclosure was preferable to disclosure. p. 553.

APPEARANCES: Margaret Nelson, Esquire on behalf of Public Service Company of New Hampshire; Larry Eckhaus, Esquire on behalf of the Consumer Advocate; Mary Hain, Esquire on behalf of Staff of the New Hampshire Public Utilities Commission.

By the COMMISSION:

REPORT ON PETITION FOR A WINTER INTERRUPTIBLE SERVICE RATE

This report concerns the petition of Public Service Company of New Hampshire (PSNH or the company) for a Winter Interruptible Service Rate (Rate WI). The report details the procedural history of the case. It provides the findings of fact and analysis. This report and order allows the company to put the proposed rate (as amended) into effect.

I. Procedural History

On October 19, 1987 Public Service Company of New Hampshire (PSNH) filed proposed Supplement No. 3 to NHPUC No. 31 — Electricity, Public Service Company of New Hampshire; Establishing Winter Interruptible Service Rate WI for effect during the months of December 1987 and January and February 1988. On October 22, 1987 the Consumer Advocate filed a notice of intervention. By order No. 18,786 (November 2, 1987) the commission suspended the proposed Winter Interruptible Service Rate WI and set November 12, 1987 as the date for a prehearing conference on the proposed Supplement to the Primary General Service Rate (GV) and Transmission General Service Rate (TR).

As part of its original filing, PSNH filed a "Report on the Background and Implementation of Interruptible Service Rate I" (Attachment 1 of the Technical Statement of Wyatt W. Brown). The company filed a letter on November 5, 1987 stating that it had inadvertently failed to request a protective order with respect to Attachments 12, 13, 14 and 17 to the above-mentioned report. By this letter the company requested a protective order to "avoid this material becoming a matter of public record generally available to persons not parties to docket no. DR 87-197." On November 6, 1987 the company filed responses to the consumer advocate's data requests and requested a protective order for the response to Consumer Advocate, Set No. 1, Request]OCA-3. The data response answer to a request to provide a schedule detailing the GV customers who would qualify for Rate WI. The consumer advocate filed an objection to the request for a protective order on November 9, 1987. It did not specifically address whether it opposed the November 5, 1987 request or the November 6, 1987 request for a protective order.

At the prehearing conference, the parties stipulated to a procedural schedule. The commission adopted this procedural schedule by report and Order No. 18,913, 72 NH PUC 539 (Nov. 18, 1987).

On November 23, 1987 the staff of the New Hampshire Public Utilities Commission (the staff) filed a document signed by the parties dated November 23, 1987 entitled Settlement Agreement: Winter Interruptible Service and Use of Customer

Standby Generation, Rate WI — PSNH and Rate WI — NEPOOL. The agreement

recommended that the commission approve the tariff pages attached to the settlement agreement (Supplement No. 3 to Tariff NHPUC No. 31, Rate WI — PSNH, as revised and Supplement No. 5, Rate WI — NEPOOL). The tariff pages document the terms and conditions of two alternative winter interruptible rate programs developed in the course of party negotiations. The settlement was intended to dispose of all issues before the commission.

On November 23, 1987 PSNH filed a response to the consumer advocate's objection to PSNH's request for a protective order. A duly noticed hearing on the merits was held on November 23, 1987

II. Positions of the Parties

A. Rate Request

The parties entered into a settlement the purpose of which was to dispose of all aspects of this case. The following is a discussion of this settlement. It is divided into a discussion of the reasons for the program, the originally proposed rate, the process used in rate development, and the terms and conditions contained in the final proposed rates.

1. Reasons for a Winter Interruptible Rate Program

As a member of the New England Power Pool (NEPOOL) PSNH has a "capability responsibility" for the period of November 1, 1987 through April 30, 1988. In other words, the company is required to have the ability to have a certain amount of peak load available to the NEPOOL system.

The amount of peak that PSNH is responsible for is a function of the sum of a 70 percent weighting of PSNH's annual peak load and a 30 percent weighting of the average PSNH's monthly peak load during the current power year. The parties agreed to a winter interruptible rate program that would reflect PSNH annual winter peak because load reductions at this time would produce the greatest cost savings to PSNH.

2. The Originally Filed Rate WI

The original rate WI gave customers a credit of $20 per kilowatt if they affected a voluntary load reduction by load interruption and/or use of customer generation at the time of PSNH's annual winter peak. The tariff would allow PSNH to ask customers to reduce load during specified peak alert periods.

3. The Rate Development Process

During the period in which the parties were conducting settlement conferences, the NEPOOL Executive Committee passed a resolution permitting participating utilities to submit winter 1987/88 interruptible loads for NEPOOL control that would ordinarily have been used by individual utilities to reduce their peak loads. In light of this event, the parties recommended that two tariff options (Rate WI — PSNH and Rate WI — NEPOOL, as discussed below) be approved for two reasons. First, the NEPOOL arrangements to adjust utilities' peak load for load reductions have not been finalized. If the adjustment method chosen does not permit PSNH to adequately reduce peak load for the purposes of capability responsibility the Rate WI - NEPOOL would not permit PSNH to reduce system costs as much as Rate WI - PSNH. Second, the existence of two alternative rates will enhance marketability given the different interruption

capacities of customers.

4. Rate WI — PSNH and Rate WI NEPOOL

Rate WI — PSNH is for voluntary load reduction by either load interruption and/or use of customer standby generation. Any Rate GV or TR customer who is able to designate at least 300 kilowatts (designated

Page 551

load) is eligible for this program. PSNH will contact those participating customers to request a load reduction during peak alert periods in December 1987 and January and February 1988. The customer will receive a $20 per KW credit based on his average amount of interruption (but no greater than designated load) during the Company's Annual Winter Peak and the next two highest periods (average interruptible demand). The customer will not receive any credit if PSNH does not request any interruption during those winter months since no savings will accrue. The customer will be assessed a charge for failure to interrupt of $5 per kilowatt if his designated load is greater than average interruptible demand. This charge will strengthen the incentive for customers to follow through as promised and compensate PSNH for any unexpected costs of purchasing power. Finally, the customer will receive a participation incentive credit of $5 times average interruptible demand if PSNH fails to notify the customer or the Company's Annual Winter Peak occurs at a time not during a peak alert period.

Rate WI — NEPOOL is the same as Rate WI — PSNH except for the following differences. The request for interruption will be based on a NEPOOL "Action 4" occurrence rather a PSNH peak alert period. The customer will not be required to interrupt load for more than 40 hours during a particular month or 8 hours during a particular day. The customer will receive a $20 per KW credit based on the average of the hourly interruptible demands for each hour of each interruption period. If there are no requests for interruption during those winter months, the customer will still receive a credit of $5 times the designated load. Unlike Rate WI — PSNH benefits will be gained from NEPOOL even if there is no need for interruption.

B. The Protective Order

The objection of the consumer advocate to the request for a protective order essentially argues two points: that the approval of tariffs under the Access to Public Records Act (Right-to-Know Law) RSA § 91-A et seq. (supp. 1986) should be done in an open and free manner, and second, the documents are already in the public record and, therefore, a protective order is unenforceable. We will assume that the objection applied to the November 5, 1987 request since it was the first request filed.

In its response to this objection PSNH avers that a protective order should issue concerning the contested Attachments 12, 13, 14 and 17 to the "Report on the Background and Implementation of Interruptible Service Rate I" because these attachments "contain confidential PSNH business information and may contain business information including usage patterns, which may be considered confidential by PSNH's customers." It asserts that disclosure of customer identity could place PSNH in a less competitive position. It contends, among other things, that the limited protection sought will not prevent full examination of all documents by all parties.

III. Commission Analysis

A. The Rate Request

[1] The commission finds that the proposed Rate WI — PSNH and Rate WI — NEPOOL are supported by the evidence and are just and reasonable. Therefore, we approve these rates for resolution of this particular petition in accordance with the agreement.

The Rate WI programs will have a cost savings benefit to PSNH and its customers. The proposed rates are approved for effect December 1, 1987 through February 29, 1988.

The company shall file a report on the results of the Rate WI programs on or before April 30, 1988. PSNH shall pursue the development of future interruptible rate programs, to the extent appropriate, utilizing the results of the Rate WI program, unless there is good cause not to do so. The State of New Hampshire Department

Page 552

of Resources and Economic Development shall be eligible for the Rate WI programs.

B. The Protective Order

We find that a protective order should issue on both requests of the company. Our reasoning is as follows.

Pursuant to the New Hampshire Constitution "the public's right of access to governmental proceedings and records shall not be unreasonably restricted." N.H. Const. pt. 1, art. 8. Under RSA 91-A:4 I (supp. 1986) the commission must hold open for public inspection all public records. This requirement is subject, inter alia, to an exception for "[r]ecords pertaining to ... confidential, commercial, or financial information ... and other files whose disclosure would constitute an invasion of privacy." RSA § 91-A:5 IV (supp. 1986). These requirements must be read to favor "providing the utmost information." Lodge v. Knowlton, 118 N.H. 574, 577, 391 A.2d 893, 895 (1978). RSA § 91-A:1 (supp. 1986).

Therefore, the initial inquiry is: are the filings public records and if so are they subject to an exception under the right to know law? In Menge v. Manchester, 113 N.H. 533, 537, 311 A.2d 116, 118 (1973) the court found that RSA § 8-B:7 supports a broad interpretation of "public records to mean virtually all records kept by an agency." RSA § 8-B:7 which involves the keeping of state archives defines "record" as a "document ... made or received pursuant to law or in connection with the transaction of official business." Under this definition the documents in question are public records because they were filed in connection with the commission's obligation to investigate rates and the company's burden of proving that the rates are just and reasonable.

The scope of the exceptions to the right to know law have not been subject to much litigation in New Hampshire. In Mans v. Lebanon School Bd., 112 N.H. 160, 162, 290 A.2d 866, 867 (1972) the Supreme Court, in considering whether teachers salaries are exempt financial information or private information, stated that:

the benefits of disclosure to the public are to be balanced against the benefits of nondisclosure to the administration of the school system and to the teachers.

[2] In weighing the benefits of disclosure against the benefits of nondisclosure we find that since all of the parties have access to the confidential competitive information, such access was adequate to protect the public interest in disclosure without the corresponding competitive injury to the utility that may have resulted from public disclosure. South Central Bell Teleph. Co. v. Mississippi Pub. Service Commission, 61 PUR4th 310 (Miss.Ch.Ct.1984). Competitive disadvantage has been recognized as sufficient harm to warrant the issuance of a protective order. Zenith Radio Corp. v. Matsushita Electric Industrial Co., 529 F.Supp. 866, 889-891 (1981). In addition, since a revenue loss is likely to result from disclosure and ratepayers would ultimately bear that loss, nondisclosure is preferable to disclosure in this case. Therefore, the information should be protected as an exception to disclosure requirements of the right to know law.

Our order will issue accordingly.

SUPPLEMENTAL ORDER

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

ORDERED, that Supplement No. 3 to Tariff NHPUC No. 31 — Electricity, Public Service Company of New Hampshire, and Supplement No. 5, Rate WI — NEPOOL and hereby approved for effect December 1, 1987 through February 29, 1988; and it is

FURTHER ORDERED, that PSNH shall file compliance tariff bearing such effective date; and it is

FURTHER ORDERED, that the two requests for protective orders by PSNH are hereby granted.

By order of the Public Utilities Commission of New Hampshire this first day of December, 1987.

==========

NH.PUC*12/01/87*[60407]*72 NH PUC 554*Portsmouth Cellular Limited Partnership

[Go to End of 60407]

72 NH PUC 554

Re Portsmouth Cellular Limited Partnership

DR 87-193
Supplemental Order No. 18,924

New Hampshire Public Utilities Commission

December 1, 1987

PETITION by cellular telephone company for temporary and permanent rates; permanent rates approved.

RATES, § 559.1 — Telephone — Cellular service.

[N.H.] Where a cellular telephone company petitioned for both temporary and permanent rates the commission approved the permanent rates, yielding a reasonable return on used and useful property less accrued depreciation during the company's first year of operation, however, the rates would expire two years from the date of the order unless reapproved by the commission; the commission declined to approve temporary rates to avoid subjecting the public to the possibility of a rate recoupment should the projections upon which the rates were based overstate the actual demand.

APPEARANCES: George Michaels, Esq. and Alan J. Bouffard, Esq. of Edwards & Angell on behalf of the Portsmouth Cellular Limited Partnership; Robert J. Carroll, Esq. of Rackemann, Sawyer & Brewster on behalf of Starcellular; and Mary C.M. Hain, Esq. on behalf of the Staff of the Public Utilities Commission.

By the COMMISSION:

REPORT ON THE PREHEARING CONFERENCE ON PERMANENT RATES AND THE HEARING ON TEMPORARY RATES

I. Procedural History

On October 7, 1987 Portsmouth Cellular Limited Partnership (Portsmouth Cellular or the partnership) filed its proposed tariff, NHPUC No. 1 — Cellular Telephone, Portsmouth Cellular Limited Partnership, to become effective November 6, 1987. Portsmouth Cellular filed a complaint for temporary rates on October 7, 1987 requesting that the commission approve immediately rates as set forth in NHPUC No. 1 — Cellular Telephone as temporary rates until permanent rates are set. In its October 7th 10petition, Portsmouth Cellular also requested a waiver of N.H. Admin. Code Puc §§1603.02, 1603.03 and 1603.06.

We issued an Order of Notice on October 21, 1987 that suspended the proposed tariff pending investigation. The order scheduled a hearing on the temporary rates pursuant to RSA §378:27 and a prehearing conference to address procedural matters regarding permanent rates pursuant to RSA §378:28 and N.H. Admin. Code Puc §203.05. A duly noticed hearing was held on November 12, 1987.

At the hearing George Michaels, Alan Bouffard, and Robert J. Carroll made motions pro hac vice. These motions were granted from the bench.

Starcellular filed a motion for limited intervention on November 12, 1987 on the matter of "simultaneous start." Simultaneous start means that both cellular carriers would begin to provide service at the same time. The parties did not object to the intervention. The motion was granted from the bench.

II. Positions of the Parties

Portsmouth Cellular averred that the proposed rates were based on their cost of providing

service, and on prices in other

markets, and they would allow Portsmouth Cellular to earn a reasonable rate of return on property used and useful in the public service minus depreciation. The commission staff did not oppose the rate. Although it testified that a more appropriate rate would be determined by separating out the cost of utility from non utility operations, the staff argued that the proposed rate was not too low since the partnership would begin to have positive earnings in its second year of operation.

The staff recommended that the rate be approved only on a temporary basis, based on its calculation that the partnership may begin to over-earn in its second year of operation. Portsmouth Cellular requested temporary rates in order to make the service available while the commission reviews the proposed permanent rates. The partnership requested flexible rates in its permanent filing, to allow the company to compete with the other cellular service carrier. However, Portsmouth Cellular stated that it would agree to fix temporary non-flexible rates to alleviate accounting and calculating difficulties which might arise should a recoupment be necessary upon the setting of permanent rates.

Concerning the issue of simultaneous start Portsmouth Cellular avers that it should be allowed to start up immediately. It argued that this would be fair to the other cellular carrier Starcellular since Starcellular would be able to start up at the same time by reselling Portsmouth Cellular's services. Starcellular did not take a position against this argument.

III. Findings of Fact

We make the following findings of fact.

The evidence shows that the company will realize at least a reasonable return on its cost of property used and useful in the public services, should its demand projections be borne out by experience. It will operate without net income until the end of its second year of operations, according to projections. The rates are the same as the rates proposed in Maine and are similar to those charged in Massachusetts.

The partnership conducted demand studies in large metropolitan areas such as Boston and Washington, D.C. Because the service is a new service, no historical data or test year information was available to use in estimating demand, revenues, and expenses.

Concerning the issue of simultaneous start, Starcellular has reached an agreement with Portsmouth to resell its services. Portsmouth Cellular will program Starcellular's numbers into its switch. When Starcellular is ready to operate its own equipment, it may program these numbers over to its own switch.

IV. Commission Analysis

The issues presented for decision in this case are: are the proposed rates just and reasonable, should temporary rates be allowed, and should Portsmouth be allowed to provide service upon the issuance of this order or must it wait for Starcellular to begin operations. We will approve the rates as just and reasonable permanent rates. Portsmouth will be allowed to begin the provision

of service on the date of this order.

Under RSA §378:5 the commission may investigate the reasonableness of any new rate. We may set temporary rates for the period of a permanent rate proceeding if in our opinion the public interest requires temporary rates. RSA §378:27. The commission determines temporary and permanent rates based on the standard that they

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.

RSA § 278:27 included by reference in RSA § 278:28.

We will approve the proposed rates on a permanent basis. However, these rates will expire two years from the date of this

order unless reapproved by the commission. The proposed rates will yield a reasonable return on used and useful property less accrued depreciation during the partnership's first year of operation.

To protect the public from excessive or extortionate rates, we will require the partnership to file all rate case requirements eighteen months from the start up date based on data reflecting the actual first year of operation, and other evidence relating to the reasonableness of the rate. We will review the filing to determine how the rates might be altered in light of the actual demand for service and cost of service and whether revised rates would be necessary.

It is not in the public interest to approve temporary rates in this case. Since the rates are based on projections we do not wish to subject the public to the risk of the possibility of a rate recoupment should the projections overstate the actual demand. The partnership has not sought the temporary rates to protect it from the results of inaccurate projections. Rather, it sought temporary rates to allow it to start business as soon as possible.

Portsmouth Cellular may, with these rates, begin providing service. However, it must provide the resale services as described in the record without discrimination to allow Starcellular to begin operating at the same time. We will affirmatively investigate any allegations by Starcellular of discrimination.

Our order will issue accordingly.

SUPPLEMENTAL ORDER

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

ORDERED, that the petition of Portsmouth Cellular Limited Partnership for permanent rates be, and hereby is, approved; and it is

FURTHER ORDERED, that Portsmouth Cellular Limited Partnership provide such resale service to Starcellular that will allow it to initiate the provision of service simultaneously; and it is

FURTHER ORDERED, that Portsmouth Cellular shall arrange to have its access tariff or agreement with the land line carrier filed within thirty days of the issuance of this order and that

such tariff or agreement shall be subject to the approval of the commission; and it is

FURTHER ORDERED, that compliance tariffs shall be filed containing an effective date the same as the date of the issuance of this order and an expiration date of two years from the date of this order.

By order of the Public Utilities Commission of New Hampshire this first day of December, 1987.

==========

NH.PUC*12/02/87*[60408]*72 NH PUC 556*Manchester NECMA Limited Partnership

[Go to End of 60408]

72 NH PUC 556

Re Manchester NECMA Limited Partnership

DE 87-154
Order No. 18,925

New Hampshire Public Utilities Commission

December 2, 1987

PETITION to conduct business as a wireline carrier of cellular radio telecommunications services; granted.

CERTIFICATES, § 101.1 — Factors affecting grant or refusal — Cellular communications services.

[N.H.] A limited partnership was authorized to construct, own, operate, and manage a cellular mobile radio communications system where the partnership provided evidence showing that it was (1) financially, managerially, legally, and able to provide service and construct facilities to provide such service and, (2) that it was also organized under the laws of the state.

APPEARANCES: Thomas C. Platt, III of Orr & Reno on behalf of Manchester

NECMA Limited Partnership and Mary C. Hain, Esq. and Daniel D. Lanning on behalf of the Staff of the Public Utilities Commission.

By the COMMISSION:

REPORT

This report concerns the petition of Manchester NECMA Limited Partnership for permission

to commence business as a public utility. The report details the procedural history of the case. It provides findings of fact and law concerning the petition. This report and order allows the petitioner to provide service subject to our approval of appropriate rates.

I. Procedural History

On August 13, 1987, the Manchester NECMA Limited Partnership (Manchester or the partnership), petitioned for permission to the extent, if any, required pursuant to RSA 374:22 and 374:5 to commence construction, ownership, operation, and management of a cellular mobile radio telecommunications system as the wireline car10rier for the Manchester-Nashua, New Hampshire, New England County Metropolitan Area ("NECMA"). The commission issued an order of notice on August 26, 1987, scheduling a hearing on the petition for August 26, 1987.

At the time of the petition, the commission was carrying out an investigation of whether it had authority to regulate cellular service in Portsmouth Cellular Limited Partnership: Petition for Permission to Commence Business as a Public Utility — Phase I. At the Phase I prehearing conference on August 11, 1987, the Manchester NECMA Limited Partnership was granted a motion to intervene. The parties submitted memoranda of law on the question of the authority of the PUC to regulate cellular telephone activities in New Hampshire pursuant to Report and Order No. 18,804 (72 NH PUC 370). On September 24, 1987, we issued Report and Order No. 18,848 which ordered that the commission is authorized to regulate cellular mobile radio telephone service and will affirmatively exercise this authority (72 NH PUC 445). The Manchester NECMA Limited Partnership, and other parties, filed a motion for a rehearing of the Phase I decision on October 15, 1987. Manchester submitted this motion for rehearing in order to preserve its right of appeal under RSA §§541:3 and 4. The commission issued Order No. 18,903 on November 17, 1987 denying the motion (72 NH PUC 501). A duly noticed hearing on the merits of the petition for permission to operate as a public utility took place on October 20, 1987.

II. Positions of the Parties

The partnership and the staff entered into a settlement the purpose of which was to dispose of all aspects of this case. The staff and the partnership agreed and stipulated that Manchester should be allowed to provide service as a public utility for the purpose of settling the proceeding.

As part of this agreement Manchester agreed to strike the portions of Stuart D. Hefferman's testimony that discussed the Federal Communications Commission's (F.C.C.) findings concerning Federal and State jurisdiction. In addition, Manchester agreed not to submit testimony concerning the so-called head start issue at this time, although it reserved its right to be heard at such time as head start becomes an issue investigated by the commission.

III. Findings of Fact

The commission makes the following findings of fact based on the record in this proceeding.

Manchester NECMA Limited Partnership is organized under the New Hampshire Limited Partnership Act. The sole general partner of the partnership is Contel Cellular, Inc. a Delaware corporation ("Contel Cellular") which owns a sixty percent

interest in the petitioner. NYNEX Mobile Communications Company, a Delaware corporation is the limited partner owning a forty percent interest. Contel Cellular intends to transfer its interest in the petitioner to Contel Cellular of New Hampshire, Inc. ("Contel New Hampshire") a corporation organized under the laws of the State of New Hampshire.

The corporate structures of Contel Cellular and Contel New Hampshire are as follows. Contel New Hampshire is a whollyowned subsidiary of Contel Cellular, Contel Cellular is a wholly-owned subsidiary of Contel Corporation, a Delaware corporation. Contel Cellular was established to operate Contel's cellular interests. Contel Cellular has nine subsidiaries that either operate or construct cellular systems or are general partners of partnerships operating or constructing cellular systems in twenty markets.

Contel will provide operational and management support to the petitioner. It will provide centralized services in engineering, maintenance support, construction, marketing sales, regulatory matters, resale, finance, accounting, budgeting, customer services, and administrative supports. Contel New Hampshire will employ a manager and a sales force, all of whom will be located in New Hampshire and supply service on behalf of the petitioner.

Contel Cellular will maintain an office in the Manchester area. A general manager will supervise agents and resellers and the direct sales force and customer relations.

Contel Cellular will have 24 hour surveillance to monitor the system and record blocked calls and "down time." Customer questionnaires and the customer service department will also monitor service.

The petitioner holds a permit from the F.C.C. issued August 7, 1987 for the construction of a cellular mobile radio telecommunications system for the proposed service area.

Contel has secured lines of credit for the purpose of loaning money to Contel Cellular for construction. Any revenue shortfalls in initial capital and start-up costs will be paid for by the partners.

IV. Commission Analysis

The petitioner Manchester NECMA Limited Partnership has requested permission pursuant to RSA §374:22 to construct, own, operate, and manage a cellular mobile radio communications system in the Manchester-Nashua, New Hampshire, New England County Metropolitan Area. We find that the petition is supported by the evidence and should be granted.

Under RSA 374:26 permission under RSA 374:22 shall be granted only if it would be "for the public good and not otherwise." In Re New Hampshire Yankee Electric Corp., DF 84-339, Report and Order No. 17,690, 70 NH PUC 563 (June 27, 1985) at 5, we stated our criteria for determining the public good as: 1) the need for the service, and 2) the ability of the applicant to provide the service. In addition, a business must be organized under the laws of the State of New Hampshire to receive the commission's permission under RSA §374:24.

In Order No. 18,848 at 15, we found that the F.C.C. has preempted the determination of need and the market structure and has permitted state certification programs that do not interfere with the "competitive market structure." Re An Inquiry into the Use of Bands 825-845 MHz and 870-90 MHz for Cellular Communications Systems, CC Docket No. 79-318, 86 F.C.C.2d 469,

503505. Therefore, we are left only with the consideration and determination of the applicant's ability to provide the service.

The standard of fitness in fulfilling the public interest includes such criteria as

(1) financial backing; (2) management and administrative expertise; (3) technical resources; and (4) the general fitness of an applicant. Re International Generation and Transmission Co., Inc., 67 NH PUC 478, 484 (1982).

Based on the foregoing findings of fact we find that Manchester has demonstrated that it is financially, managerially, legally, and otherwise able to provide service and

Page 558

construct facilities to provide the service. Manchester has also shown that it is organized under the laws of the State of New Hampshire. Consequently, we find it in the public good to grant the partnership's petition contingent upon our approval of service rates.

Our order will issue accordingly.

ORDER

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

ORDERED, that Manchester NECMA Limited Partnership be, and hereby is, granted permission to do business as the wireline carrier of cellular radio telecommunications services in the ManchesterNashua New Hampshire, New England County Metropolitan Area contingent upon our approval of rates for service; and it is

FURTHER ORDERED, that pursuant to RSA §374:15 Manchester submit all the filings and reports as the New Hampshire Public Utilities Commission shall from time to time find required for the commission to comply with its duty to keep informed pursuant to RSA §§374:4, 374:5 and its prerogative to require accounting systems, depreciation accounts and the filing of reports under §§374:8, 10, and 15 respectively, and that pursuant to RSA §363-A:1, et seq., Manchester pay all assessments levied upon the company by the New Hampshire Public Utilities Commission, based on the amount of revenues received as a result of doing business in New Hampshire.

By order of the Public Utilities Commission of New Hampshire this second day of December, 1987.

==========

NH.PUC*12/02/87*[60409]*72 NH PUC 559*StarCellular

[Go to End of 60409]

72 NH PUC 559

Re StarCellular

DE 87-137

Order No. 18,926

New Hampshire Public Utilities Commission

December 2, 1987

PETITION for permission to commence business as a wireline carrier of cellular mobile radio telephone service; granted, contingent on approval of service rates.

CERTIFICATES, § 101.1 — Telephone — Mobile service — Wireline carrier.

[N.H.] Permission to commence business as a wireline carrier of cellular mobile radio telephone service was granted, contingent on approval of service rates, to an applicant organized under laws of the State of New Hampshire that demonstrated its financial, managerial, legal, and other ability to construct the necessary facilities and to provide service.

APPEARANCES: Harold Carroll, Esq. of Rackemann, Sawyer & Brewster on behalf of StarCellular; Dom S. D'Ambruoso, Esq. of Ransmeier and Spellman on behalf of JHP Partnership; Thomas C. Platt, III, Esq. of Orr and Reno on behalf of Manchester NECMA Limited Partnership; and Mary C.M. Hain, Esq. and Daniel D. Lanning on behalf of the Staff of the Public Utilities Commission.

By the COMMISSION:

REPORT

This report concerns the petition of Starcellular for permission to commence business as a public utility. The report details the procedural history of the case. It provides findings of fact and law concerning the petition. This report and order allows the petitioner to provide service subject to our approval of appropriate rates.

Page 559

I. Procedural History

On July 3, 1987, StarCellular applied pursuant to RSA §374:22 (1984) for permission to commence business as a wireline carrier of cellular mobile radio telecommunications for the Portsmouth-DoverRochester, New Hampshire/Maine New England County Metropolitan Area (NECMA). The commission issued an order of notice on July 8, 1987 opening Docket DE 87-126 (Portsmouth Cellular Limited Partnership: Petition for Permission to Commence Business as a Public Utility) and scheduling a prehearing conference to open a generic proceeding (Portsmouth Cellular Limited Partnership: Petition to Commence Business as a Public Utility10Phase I, Docket DE 87-126 to consider whether the commission has authority to regulate cellular service. By Order No. 18,778 issued July 31, 1987 the commission opened Docket DE 87-137 entitled Re StarCellular: Application for Permission and Approval to Furnish Cellular Mobile Telephone Service in Strafford County for the purpose of investigating whether the engaging in business or exercise of right, privilege, or franchise of StarCellular to construct

and operate a cellular mobile telephone system in the Portsmouth-Dover-Rochester NECMA is in the public good pursuant to RSA §374:26 (1984). This order required StarCellular to be a mandatory party in Phase I. By this order the commission also deferred any decision on the merits of StarCellular's application until such time as a decision in Phase I was issued. On September 24, 1987 the commission issued Report and Order No. 18,848 in Phase I finding that it has authority to regulate cellular mobile radio telephone service (72 NH PUC 445). Motions to rehear the decision in Phase I were filed by other parties to the proceeding on October 3, 1987. The commission issued Order No. 18,903 on November 7, 1987, denying the motions (72 NH PUC 525).

A duly noticed hearing on the merits of the petition for permission to operate as a public utility took place on September 21, 1987.

II. Positions of the Parties

StarCellular took the position that it is managerially, financially and technically capable of providing service and that the Federal Communications Commission (F.C.C.) has already determined that there is a public need for the proposed service. StarCellular also argued that the commission should require all cellular carriers in a given NECMA to begin providing service simultaneously. The commission staff participated in the proceeding, but did not take a position on any issues.

III. Findings of Fact

The commission makes the following findings of fact based on the record in this proceeding.

StarCellular is the registered tradename of Strafford Cellular, Inc. (SCI), a New Hampshire corporation and a wholly owned subsidiary of Saco River Cellular Telephone Company. Saco River Cellular Telephone Company is a general partnership formed under the laws of the State of Maine between Saco River Cellular, Inc. (SRC), a Maine corporation that holds a 60% interest and Telephone and Data System, Inc. (TDS) an Iowa corporation that owns 40% interest. SRC, a wholly owned subsidiary of Saco River Telegraph and Telephone Company, ("SRTTC") (a public utility in the State of Maine) is the managing partner. TDS is a communications company with holdings throughout the United States.

SRCTC received a permit effective April 6, 1987 from the F.C.C. authorizing it to construct a cellular mobile radio telecommunications system for the proposed service area. SCI exists solely for the purpose of jurisdictional accounting with respect to regulation, revenues, taxation, and corporate responsibility in the State of New Hampshire. SRCTC will retain all employees and management of the Starcellular system.

The SCRTC partnership will capitalize with a 20% equity contribution by its

partners and with 80% long term debt guaranteed by the partnership. The managing partner may call for additional capital contributions from the partners on a quarterly basis. TDS will assist in the borrowing of additional funds where necessary to maintain the 80%/20% debt to equity structure.

The partnership has managerial and technological experience in other communications fields. The managing partner's parent corporation has experience in the cable television field, in the telephone interconnect business, and in the telephone key systems and private branch exchange markets and, in the interstate digital microwave system market. It services 10,000 customers.

The managing partner's parent corporation employs personnel with technical careers in radio, radar, telephone switching, cable television electronics, and microwave operations. StarCellular may also draw on its brother and sister companies for advice in these areas, although StarCellular will employ its own technical personnel.

At least two technical persons will be trained on the AT&T cellular equipment that will be installed to provide the Starcellular service. These technicians will be responsible for system maintenance. They will have state of the art "trouble shooting" equipment and supervisory emergency back up and technical aid from SRTTC technicians. One technician will have an F.C.C. license in radio. AT&T will also provide a "back-up" technical service via remote diagnostics.

In addition, a system of alarms at the mobile telecommunications switching office (MTSO) will report problems from any cell site. Twenty-four hour dispatch service will be available for cell service.

IV. Commission Analysis

The petitioner has requested pursuant to RSA §§374:22 and 26, that the commission grant it permission to engage in the business of providing cellular mobile radio telecommunications service and to construct a cellular system to provide such service. The language of RSA §374:26 states that permission shall be granted only if it would be "for the public good and not otherwise." In Re New Hampshire Yankee Electric Corp., DF 84-339, Report and Order No. 17,690 at 5, 70 NH PUC 563 (June 27, 1985), we stated our criteria for determining the public good as: 1) the need for the service, and 2) the ability of the applicant to provide the service. In addition, a business must be organized under the laws of the State of New Hampshire to receive the commission's permission under RSA §374:24.

In Order No. 18,848 at 15, we found that the F.C.C. has preempted the determination of need and the market structure and has permitted state certification programs that do not interfere with the "competitive market structure." Re An Inquiry into the Use of Bands 825-845 MHz and 870-90 MHz for Cellular Communications Systems, CC Docket No. 79-318, 86 F.C.C.2d 469, 503505. Therefore, we are left only with the consideration and determination of the applicant's ability to provide the service.

The standard of fitness in fulfilling the public interest includes such criteria as

(1) financial backing;

(2) management and administrative expertise;

(3) technical resources; and

(4) the general fitness of an applicant. Re International Generation and Transmission Co., Inc., 67 NH PUC 478, 484 (1982).

Based on the foregoing findings of fact we find that StarCellular has demonstrated its

financial, managerial, legal and other ability to provide service and construct facilities to provide the service. StarCellular has also shown that it is organized under the laws of the State of New Hampshire in compliance with RSA 374:34. Consequently, we find it in the public good to grant the partnership's petition contingent upon our approval of service rates.

Although the petitioner submitted a tariff with its testimony, no public notice was given of the proposed rates and inadequate

Page 561

tariff support material was submitted. We have been informed that the petitioner will be correcting these inadequacies. Since StarCellular may not begin to provide service until tariffs have been approved we will defer our consideration of the simultaneous start-up issue until we consider the appropriate effective dates for the tariffs.

Our order will issue accordingly.

ORDER

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

ORDERED, that StarCellular be, and hereby is, granted permission to do business as the wireline carrier of cellular radio telecommunications services in the Portsmouth-Dover-Rochester New Hampshire/Maine New England County Metropolitan Area contingent upon our approval of rates for service; and it is

FURTHER ORDERED, that pursuant to RSA §374:15 Portsmouth submit all the filings and reports as the New Hampshire Public Utilities Commission shall from time to time require the commission to comply with its duty to keep informed pursuant to RSA §§374:4, 374:5 and its prerogative to require accounting systems, depreciation accounts and the filing of reports under §§374:8, 10, and 15 respectively, and that pursuant to RSA §363-A:1, et seq., Portsmouth pay all assessments levied upon the company by the New Hampshire Public Utilities Commission, based on the amount of revenues received as a result of doing business in New Hampshire.

By order of the Public Utilities Commission of New Hampshire this second day of December, 1987.

==========

NH.PUC*12/07/87*[60411]*72 NH PUC 562*New England Telephone and Telegraph Company

[Go to End of 60411]

72 NH PUC 562

Re New England Telephone and Telegraph Company

DF 87-216
Order No. 18,928

New Hampshire Public Utilities Commission

December 7, 1987

ORDER authorizing a local exchange telephone carrier to issue and sell debt securities and to accept equity infusions.

SECURITY ISSUES, § 120 — Conditions and restrictions — Debt and equity ratios — Interest rate.

[N.H.] A local exchange telephone carrier was authorized to issue and sell debt securities, not to exceed $500 million, under a shelf registration arrangement and to accept equity infusions during the next few years, provided that the interest rate on such debt did not exceed 12%, and after any such transactions the debt ratio did not exceed 45% and the equity ratio did not exceed 60%.

By the COMMISSION:

ORDER

WHEREAS, New England Telephone & Telegraph Company (the Company) filed an application on November 3, 1987 with the Commission requesting the authority to issue and sell debt securities under a shelf registration arrangement and accept equity infusions from NYNEX during the next few years; and

WHEREAS, the total amount of debt securities to be issued under this application will not exceed $500,000,000; and

WHEREAS, it is not determinable at this time whether those debt securities will be long-term or intermediate term (i.e., maturing within 10 years) or a combination of both; and

WHEREAS, the interest rate on such

debt securities does not exceed 12% and the Company's debt ratio immediately following does not exceed 45%; and

WHEREAS, from time to time equity infusions from NYNEX will be made as long as the equity ratio immediately following the infusion does not exceed 60%; and

WHEREAS, the proceeds from these debt securities will be applied towards repayment of short-term debt, to refund maturing long-term debt, to refinance higher coupon debt and/or to make improvements, extensions or additions to the Company's plant; and

WHEREAS, New England Telephone believes that over the next few years capital markets might provide financially advantageous opportunities to exercise possible refinancings of existing debenture issues, with newly issued debt securities to be offered at a lower rate of interest; and

WHEREAS, New England Telephone's embedded cost of debt and its overall cost of capital

would thus be reduced; and

WHEREAS, this Commission finds that the issue and sale of the debt obligations upon the proposed terms will be consistent with the public good; and

WHEREAS, the acceptance of equity infusions from NYNEX upon the terms proposed will be in the public good; and

WHEREAS, the debt obligations, excluding those offered under a medium term note program, will be issued pursuant to the terms of an indenture date November 28, 1984, between the Company and State Street Bank and Trust Company.

ORDERED, that the Company, be and hereby is, authorized to issue and sell debt securities not to exceed $500,000,000 and to accept equity infusions from NYNEX provided that the interest rate on such debt not exceed 12% and after any such transactions the debt ratio not exceed 45% and the equity ratio not exceed 60%; and it is

FURTHER ORDERED, that the Company forward a report to the Commission on any debt issuances or equity infusions within thirty days of receipt of the proceeds.

By order of the Public Utilities Commission of New Hampshire this seventh day of December, 1987.

==========

NH.PUC*12/08/87*[60412]*72 NH PUC 563*Wilton Telephone Company

[Go to End of 60412]

72 NH PUC 563

Re Wilton Telephone Company

DR 87-42
Order No. 18,929

New Hampshire Public Utilities Commission

December 8, 1987

PETITION by a local exchange telephone carrier for permission to borrow on a short-term basis; granted.

SECURITY ISSUES, § 58 — Purposes and subjects of capitalization — Additions and betterments.

[N.H.] A local exchange telephone carrier was authorized to borrow $200,000 on a short term basis, the proceeds of which to be used as part of the purchase price for a digital switch, based on the commission's conclusion that the proposed uses and terms for the requested borrowing were reasonable under the circumstances and appeared to be in the public good.

By the COMMISSION:

ORDER

WHEREAS, on March 5, 1987 Wilton Telephone Company (petitioner) filed a letter with the commission requesting permission to install a 3,000-line Stromberg Carlson digital office and further requesting financing of up to $500,000 for this project; and

WHEREAS, on March 16, 1987 the Finance Department sent the commission's requirements for the financing of securities to the petitioner by First Class U.S. mail; and

Page 563

WHEREAS, on April 16, 1987 the commission sent a letter to the petitioner requesting the submission of a detailed written cost analysis of the equipment alternatives proposed along with the assumptions and backup data utilized; and

WHEREAS, on June 19, 1987 the petitioner filed three (3) exhibits intended to comply with the commission's request for a detailed cost analysis and backup data; and

WHEREAS, on August 21, 1987 the Company filed a pro forma balance sheet and income statement and rate of return calculations intended to comply with the security financing requirements; and

WHEREAS, on September 18, 1987, the commission issued data requests in connection with the Staff investigation of this matter; and

WHEREAS, on October 2, 1987, Wilton filed responses to said data request; and

WHEREAS, in a hearing held at the commission on November 4, 1987, Wilton notified the commission of its desire to amend its petition from a request for $500,000 of long term debt to $200,000 of short term debt; and

WHEREAS, on November 17, 1987 the commission received an amended petition from Wilton to this effect; and

WHEREAS, the commission has investigated the matter including Wilton's petition and the responses to staff data requests; and

WHEREAS, it appears that the proposed uses for the requested borrowing and the proposed terms for said borrowing are reasonable under all of the circumstances and appear to be in the public good; it is hereby

ORDERED, that Wilton is hereby authorized to borrow on a short term basis $200,000. The proceeds of which to be used as part of the purchase price of $591,000 for a 3000 line Stromberg Carlson digital switch.

By order of the Public Utilities Commission of New Hampshire this eighth day of December, 1987.

==========

[Go to End of 60413]

72 NH PUC 564

Re Pennichuck Water Works

DR 87-127
Order No. 18,930

New Hampshire Public Utilities Commission

December 9, 1987

ORDER nisi adopting revisions to the tariff of a water utility.

SERVICE, § 472 — Water — Tariff revisions — Notice and hearing.

[N.H.] Revisions to the tariff of a water utility, providing primarily for the option of customer installation of service lines and the elimination of a 25 foot free distance allowance allocable to fire protection on developer main extensions, were authorized to become effective twenty days from the date of the order, after the utility provided notice by publication to all persons and the public had an opportunity to respond in support or in opposition to the revisions.

By the COMMISSION:

ORDER

WHEREAS, Pennichuck Water Works, a water public utility operating under the jurisdiction of this Commission has filed certain revisions to its tariff; and

WHEREAS, after investigation and consideration, this Commission is satisfied that these revisions 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 these revisions; it is hereby

ORDERED, that Pennichuck Water Works notify all persons of the above filing by publication of an attested copy of this order in a newspaper having general circulation in that portion of the State in which operations are conducted, such publication to be no later than December 17, 1987 and

designated in an affidavit made on a copy of this order and filed with this office on or before December 29, 1987; and it is

FURTHER ORDERED, that all persons interested in responding in this matter may submit their comments to the Commission or may submit a written request for a hearing in this matter

no later than December 24, 1987; and it is

FURTHER ORDERED, NISI, that 1st Revised Page 1, 2nd Revised Pages 4 and 4-A, 4th Revised Page 17, and 3rd Revised Pages 18, 19, and 20 of Tariff NHPUC No. 4 Pennichuck Water Works shall become effective as filed, such revised pages providing primarily for:

1. The option of customer installation of his own service line, built to water company standards, and upon payment of a service connection fee of $85.

2. The elimination of the 25 foot free distance and allowance allocable to fire protection on developer main extensions.

and it is

FURTHER ORDERED, that such authority shall be effective twenty (20) days from the date of this order.

By order of the Public Utilities Commission of New Hampshire this ninth day of December, 1987.

==========

NH.PUC*12/09/87*[60414]*72 NH PUC 565*Manchester Water Works

[Go to End of 60414]

72 NH PUC 565

Re Manchester Water Works

DE 87-219
Order No. 18,931

New Hampshire Public Utilities Commission

December 9, 1987

ORDER authorizing a water utility to extend further its mains and service.

SERVICE, § 210 — Extensions — Water.

[N.H.] A water utility was authorized to extend further its mains and service to serve an area in which no other water utility had franchise rights, and was ordered to provide notification by publication so that the public had an opportunity to respond in support or opposition before the authority became effective.

By the COMMISSION:

ORDER

WHEREAS, Manchester Water Works, a water public utility operating under the jurisdiction

of this Commission in areas served outside the City of Manchester, by a petition filed November 5, 1987, seeks authority under RSA 374:22 and 26 as amended, to further extend its mains and service in the Town of Bedford; and

WHEREAS, no other water utility has franchise rights in the area sought, and the Petitioner submits that the area will be served under its regularly filed tariff; and

WHEREAS, the Board of Selectmen, Town of Bedford, has stated that it is in accord with the petition; and

WHEREAS, after investigation and consideration, this Commission is satisfied that the granting of the petition will be for the public good; and

WHEREAS, the public should be offered an opportunity to respond in support or in opposition before the Commission acts on this petition; it is hereby

ORDERED, that all persons interested in responding to the petition be notified that they may submit their comments to the Commission or may submit a written request for a hearing in this matter no later than December 28, 1987; 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

December 16, 1987 and designated in an affidavit to be made on copy of this Order and filed with this office on or before December 29, 1987; and it is;

FURTHER ORDERED, NISI that Manchester Water Works be authorized pursuant to RSA 374:22, to extend its mains and service in the Town of Bedford in an area herein described, and as shown on a map on file in the Commission offices:

A block area bound on the south and east by existing franchised areas as approved in docket D-E 6503 and Order No. 11,000 (58 NH PUC 39); bound on the west by the easterly side of Patten Road, and on the north by the southerly property line of Lot 52, Map 22, i.e., Manchester Country Club, "Tax Map" Town of Bedford.

and it is

FURTHER ORDERED, that such authority shall be effective on December 29, 1987 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 ninth day of December, 1987.

==========

NH.PUC*12/09/87*[60415]*72 NH PUC 566*Southern New Hampshire Water Company, Inc.

[Go to End of 60415]

72 NH PUC 566

Re Southern New Hampshire Water Company, Inc.

DR 87-135
Second Supplemental Order No. 18,932
New Hampshire Public Utilities Commission
December 9, 1987

PETITION by water utility for authority to implement temporary rates; granted.

---

1. RATES, § 85 — Commission authority — Over temporary rates — Discretion.

[N.H.] The commission has broad discretion as to requests for temporary rates, and its duty to investigate proposals for temporary rates is less than that required for permanent rate filings. p. 567.

2. RATES, § 249 — Schedules and formalities — Effective date — Temporary rates.

[N.H.] Absent extraordinary circumstances, the effective date for implementation of temporary rates will be the date of the enabling order, and will not be the filing date or some other retroactive date. p. 567.

3. RATES, § 630 — Temporary rates — Effect of inadequate service — Mitigating factors.

[N.H.] Although a water utility admitted it was providing inadequate service from some of its divisions, it was allowed to implement increased temporary rates, where the divisions had only recently been acquired and the utility was attempting to initiate a systems improvement program. p. 567.

APPEARANCES: James C. Hood, Esquire of McLane, Graf, Raulerson & Middleton for Southern New Hampshire Water Company, Inc.; Michael Holmes, Esquire for the Office of Consumer Advocate; and Martin C. Rothfelder, Esquire for the Com- mission and Commission Staff.

By the COMMISSION:

REPORT REGARDING TEMPORARY RATES AND OTHER MATTERS

On September 4, 1987, Southern New Hampshire Water Company, Inc. (company or Southern) filed a petition requesting implementation of temporary rates for fourteen water systems known collectively as the "Policy Water Systems." The petition requested rates to be effective as of September 13, 1987. September 13, 1987 is one month after the date of the Company's

initial filing for permanent rate relief in this docket.

On November 4, 1987 the company filed proposed tariffs identical with those that initiated this rate case except that the new proposed tariffs bore an effective date of November 4, 1987. A hearing on the mer- its of the temporary rate request was initially scheduled for November 3, 1987 and was continued to November 9, 1987. At the November 9, 1987 hearing the company amended its petition for temporary rates to request rates effective on November 4, 1987.

The evidence presented at the November 9, 1987 hearing indicates that Southern New Hampshire Water Company obtained the water systems in its Policy division relatively recently and has not pursued rate relief in that division until this time. At the time Southern obtained the companies, the prior owners were seeking rate relief before this commission. However, Southern New Hampshire Water Company, Inc. withdrew those rate increase requests.

The limited inquiry in the temporary rate proceeding indicates that the company is providing a deficient level of service in its Policy division. The company itself admits that. The company witness indicated that the company was spending significant monies to improve the facilities, but could not, when asked, indicate more than one project that the company had undertaken on the fourteen water systems.

[1] 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, 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 Hampshire v. New England Teleph. & Teleg. Co., 103 N.H. 394, 40 PUR3d 525, 173 A.2d 728 (1961).

[2] The commission believes that temporary rates at current rate levels should become effective on the effective date of the attached order. The timing of this rate action is consistent with past commission practice on this issue as described in docket no. DR 85-304, Re Concord Steam Corp., Report and Order No. 18,095, 71 NH PUC 104 (January 29, 1986). In Re Concord Steam Corp. the commission stated 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.

[3] The only extraordinary circumstances in the case at hand was the company's admission of providing deficient service. The commission believes consideration of these service problems, and their relationship to temporary and permanent rates should be deferred to the permanent rate case. The commission expects the company to provide prefiled testimony addressing each of the fourteen systems with regard to current plant (adequacy and condition); improvements to date; specific scheduled additional improvements; all known outages in the Policy division under the company's ownership (including duration of the outage, number of customers affected, cause, and resolution), and all service related complaints under the company's ownership (including the

character of each complaint and the disposition of it). The company shall file such testimony on or before January 6, 1988. Testimony addressing outages and complaints should at a minimum include the period through December 24, 1987.

With regard to the company's revised tariffs filed November 4, 1987 and bearing that same effective date, the commission finds that those tariffs supercede the tariffs filed under a cover letter dated August

13, 1987 and suspended in commission Order No. 18,882 (September 10, 1987). The commission finds good cause for filing the November 4, 1987 tariffs with less than a thirty day effective day, but hereby suspends those tariffs. Those tariffs that the commission hereby suspends are designated:

third revised page 6 superceding second revised page 6, third revised page 7 superceding second revised page 7, and third revised page 8 superceding second revised page 8.

As noted above, these tariffs all bear an effective date of November 4, 1987.

Our order will issue accordingly.

SUPPLEMENTAL ORDER

Based upon the foregoing REPORT REGARDING TEMPORARY RATES, which is incorporated herein by reference, it is hereby

ORDERED, that Southern New Hampshire Water Company, Inc. is hereby authorized to implement temporary rates at current rate levels for service in its Policy Division rendered on or after the effective date of this order; and it is

FURTHER ORDERED, that Southern New Hampshire Water Company, Inc. shall, within five dates of the effective date of this order, file temporary tariffs reflecting any temporary rates implemented under this order; and it is

FURTHER ORDERED, that Southern New Hampshire Water Company, Inc. shall file testimony as detailed in the foregoing report; and it is

FURTHER ORDERED, that the proposed tariffs filed November 4, 1987 that are further described in the foregoing report are suspended.

By order of the Public Utilities Commission of New Hampshire this ninth day of December, 1987.

==========

NH.PUC*12/10/87*[60416]*72 NH PUC 568*Manchester Water Works

[Go to End of 60416]

DE 87-207
Order No. 18,933

New Hampshire Public Utilities Commission

December 10, 1987

ORDER permitting a municipal water utility to extend its mains and service into another town.

SERVICE, § 204 — Extensions — Municipal utility — Extraterritorial service.

[N.H.] Based on evidence of public need, and knowing of no opposition to a proposed extension of service, a municipal water utility was allowed to proceed with its plans to extend service into another town.

By the COMMISSION:

ORDER

WHEREAS, Manchester Water Works, a water public utility operating under the jurisdiction of this Commission in areas served outside the City of Manchester, by a petition filed October 27, 1987, seeks authority under RSA 374:22 and 26 as amended, to further extend its mains and service in the Town of Bedford; and

WHEREAS, no other water utility has franchise rights in the area sought, and the Petitioner submits that the area will be served under its regularly filed tariff; and

WHEREAS, the Board of Selectmen, Town of Bedford, has stated that it is in accord with the petition; and

WHEREAS, after investigation and consideration, this Commission is satisfied that the granting of the petition will be for the public good; and

WHEREAS, the public should be offered an opportunity to respond in support or in opposition before the Commission acts on this petition; it is hereby

ORDERED, that all persons interested in

Page 568

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 December 29, 1987; 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 December 17, 1987 and designated in an affidavit to be made on copy of this Order and filed with this office on or before December 30, 1987; and it is;

FURTHER ORDERED, NISI that Manchester Water Works be authorized pursuant to RSA 374:22, to extend its mains and service in the Town of Bedford in an area herein described, and as shown on a map on file in the Commission offices:

A block area beginning at a point at the intersection of Route 101 and Route 114; thence southerly along the easterly line of the New England Power Company easement; thence northerly and westerly along the back lot lines of the lots along Constitution Drive and Independence Way to Route 101; thence northerly along the northerly line of Holbrook (Bedford) Road to Old Bedford Road; thence easterly along the northerly lot lines of the properties on the northerly side of Old Bedford Road to the existing franchise limits as approved in docket D-E 4429 and Order No. 8464, thence southerly along Route 114 to the point of beginning;

and it is

FURTHER ORDERED, that such authority shall be effective on December 30, 1987 unless a request for hearing is filed with the Commission as provided above or unless the Commission orders otherwise prior to the effective date.

By order of the Public Utilities Commission of New Hampshire this tenth day of December, 1987.

==========

NH.PUC*12/21/87*[60417]*72 NH PUC 569*Public Service Company of New Hampshire

[Go to End of 60417]

72 NH PUC 569

Re Public Service Company of New Hampshire

DR 87-151
12th Supplemental Order No. 18,935
New Hampshire Public Utilities Commission
December 21, 1987

MOTIONS to strike testimony and compel discovery; denied.

---

1. PROCEDURE, § 28 — Admission of evidence — Testimony — Motion to strike.

[N.H.] Where a motion to strike testimony related to written testimony that was submitted in prehearing conferences but which had not been chosen for use by any party at the formal hearing level, the motion to strike was denied as being moot. p. 570.

2. PROCEDURE, § 16 — Discovery — Motion to compel response — Timing.

[N.H.] A motion to compel a response to a discovery request was denied where the request was entered in an expedited proceeding well after the conclusion of all scheduled testimony and

the closing of the evidentiary hearing portion of the case. p. 571.

By the COMMISSION:

REPORT REGARDING OUTSTANDING MOTIONS, CLOSING OF RECORD AND POST HEARING ARGUMENT

I. Introduction and Summary

This report and order disposes of all outstanding motions and requests, and provides for the closing of the record and post hearing argument. Specifically, this report and order denies the motion to strike portions of testimony of Martin J. Whitman filed by Public Service Company of New

Page 569

Hampshire (PSNH) on October 30, 1987, grants the PSNH motion entitled "PSNH Motion for Protective Order" filed December 3, 1987, and denies the Consumer Advocate's Motion to Compel (as it relates to this docket) filed December 7, 1987. The Commission below provides opportunities for parties to object to the admission of any of the numbered exhibits presented during the course of the hearing and sets December 31, 1987 as the date for the commission to hear oral argument on this matter.

II. PSNH Motion to Strike Testimony

[1] On October 30, 1987, PSNH filed a Motion to Strike Portions of Testimony of Martin J. Whitman, or in the Alternative, To Compel Further Responses to Certain PSNH Data Requests. This motion related to the written testimony of Mr. Martin Whitman that the commission staff filed in this case and to the PSNH data requests served upon the staff related to that prefiled testimony. On November 4, 1987 the staff filed a letter advising the commission and all parties to the docket that the staff will not call Mr. Whitman as a witness and thus would not be sponsoring that testimony. To date, neither Mr. Whitman or his organization, Consolidated Utilities and Communications, Inc. (CUC) has pursued intervention in this docket in order to present that testimony. In contrast, in docket DF 87-182, they have pursued such action. Thus, at this point in time, there is no party offering Mr. Whitman's testimony along with the related duties of dealing with the discovery propounded by PSNH on that prefiled testimony. Thus, since there is no one requesting an opportunity to present that testimony and to carry out related duties, the motion to strike portions of that testimony, as well as to compel data requests related to it, is moot. Thus, the commission shall deny the motion.

III. PSNH Motion for a Protective Order

On December 3, 1987 PSNH filed various materials in response to commission Order No. 18,881 (72 NH PUC 509) and Order No. 18,911 (72 NH PUC 534). Those orders ordered PSNH to comply with certain data requests of the Campaign for Ratepayers Rights (CRR). Along with the material provided on December 3, 1987 PSNH also filed a motion entitled: "PSNH Motion for a Protective Order". In that motion, PSNH requested that it not be required to provide ten specifically identified documents, and alleged that they contained confidential information.

Since, as all parties are aware, this docket is on an expedited schedule and, furthermore, as over two weeks have passed since the filing of that motion, it seems appropriate to find that the PSNH motion is uncontested. Thus, the commission shall grant the PSNH motion and thereby not require the provision of the ten documents that they have listed.

IV. Consumer Advocate Motion to Compel

On December 7, 1987 the Consumer Advocate filed a Motion to Compel requesting that the commission compel responses to the following data requests in this proceeding:

159, 161, 162, 163, 165-172, 179, 180, 184, 187, 189, 193, 195-197, 198(b), 198(c), 199, 200, 210-212.

The Consumer Advocate's motion and our files reflect that these data requests were part of the fourth set of the Consumer Advocate's data requests and that they were filed on October 23, 1987.

The procedural circumstances of this case at the October 23, 1987 date are, in our opinion, relevant to the disposition of this motion. In this case, the commission had required that all witnesses present their direct testimony by prefiling written testimony at set due dates. On October 23, those due dates had long passed and all witnesses with prefiled testimony, except Mr. Whitman, had presented their testimony and been

cross-examined. On October 23, the only anticipated additional hearing was set for November 23, 1987 to hear the testimony of witness Whitman. On November 4, 1987 the staff indicated that they would no longer be offering the testimony and therefore, the commission eventually cancelled that hearing date. In addition, the commission notes that it has handled this docket in an expeditious manner which at various times has prompted complaints from virtually all parties.

Discovery before this commission has in this docket and virtually all dockets operated through data requests. Such requests are not unusual in discovery before administrative agencies that hear rate cases. See e.g.: 52 Fed.Reg. 6,957 (FERC Procedural Rule 406) (March 6, 1987). See generally: I. Benkin, "More Ado About Prehearing Discovery at FERC" 6 Energy Law Journal 1, 1 (1985). The commission made specific provisions for discovery in this docket. In cases before the commission such as this one, parties exchange discovery prior to, during and perhaps even after the hearing without involving the commission in setting additional dates to carry out discovery. This is an appropriate and reasonable action because the commission is likely to grant discovery through additional data requests unless there are compelling reasons to do otherwise.

[2] In the matter at hand, the commission has before it a request to compel discovery in an expedited proceeding after the conclusion of scheduled testimony except for that of Mr. Whitman. Soon after it was filed, the testimony of Mr. Whitman was no longer being offered, thereby rendering the evidentiary hearing portion of this case essentially complete. The Consumer Advocate has alleged that responses to the data requests "will be required in order for the commission to develop a full and complete record in each of these proceedings". Considering

the procedural context of this docket at the time those data requests were promulgated, the commission does not deem a blanket allegation as quoted above to be sufficient to require PSNH to provide responses to those data requests in this docket.

Such belated and unexplained discovery at this point in this docket is inconsistent with the expedited manner in which the commission has handled this docket. All parties have been aware of that expeditious treatment and, as indicated above, have complained of that treatment with regard to at least specific individual decisions that affected them. The Consumer Advocate's motion does not allege or show any extraordinary circumstance that indicates we should require the answer to any or all of these data requests. Thus, the commission finds the only appropriate action at this point is to deny the Consumer Advocate's Motion to Compel. This ruling should not be taken as any indication of how the commission will rule on this same motion to compel as it relates to docket DF 87-182.

V. Closing of the Record and Oral Argument

As discussed above, the commission had a hearing scheduled for November 23, 1987 that was reasonably anticipated to be the last hearing in this docket. Traditionally, at the end of this evidentiary hearing, the commission on the record hears motions to admit documents that have been provided exhibit numbers and rules thereon. In this case, since that final hearing was cancelled, the commission shall deal with such matters via commission filings.

On December 8, 1987 the commission staff requested that the revised attachments A, B, C, and D to the affidavit of PSNH witness Stetson (exhibit 32) be marked as an exhibit. On December 10, 1987 PSNH, via a letter, requested that the cover letter for the filing of that material be admitted as an exhibit in this proceeding.

The attachments that the staff requests be marked as an exhibit relate to various calculations involved in, among other things, setting rates that result in the requested increase based upon data that is more recent than the originally filed attachments. According to PSNH witness Stetson, this

request was generally the subject of a data request and the company had indicated that it did not have the data available. The company had to go through various calculations to develop this data. The company eventually agreed to provide those attachments. (Tr. Day 8, p. 55). The witness indicated that it would be provided with "a certain degree of caveats" that his counsel indicated to him was necessary.

Staff's request for this material was reasonable. It did not become available as a result of data requests earlier on, and it shall be marked as exhibit 57 at this time. It is clear from the exhibit and testimony as to what the data is and parties have had a reasonable opportunity to cross-examine the relevant witness related to at least the concepts that it is based upon.

In contrast, the item that PSNH requests be marked involves evidence on the effect of regulatory lag on PSNH as it relates to their requested October 1, 1987 effective date. The commission cannot reasonably construe this as a caveat relating to the calculation that the staff requested, but instead an unsworn statement on the impact of regulatory lag without the

opportunity for cross-examination. Thus, the commission shall not mark the cover letter that PSNH requests be marked.

In this procedural context, the commission shall presume that parties were intending to offer the exhibits that they asked be marked for identification during this proceeding. Thus, the commission shall consider, sua sponte, striking the identifications from all those exhibits and accepting them for consideration in this proceeding. The commission has already excluded portions of exhibit 2 and exhibit 3 relating to the Seabrook nuclear power plant from consideration in this proceeding. With that exception, parties desiring to object to any portion of any exhibit identified with a number in this proceeding must file an objection and the reason therefore no later than December 23, 1987. Parties shall assure that all such objections are in the hands of the party sponsoring the relevant exhibit on that same date and to all other parties by December 24, 1987. Responses to those objections shall be filed with the commission on or before twelve o'clock noon on December 30, 1987.

The commission shall hear oral arguments on this case on December 31, 1987 at 10:00 a.m. All parties shall have twenty minutes to orally argue its case and PSNH shall have three minutes rebuttal time at the end of the argument if it desires. The order for the arguments shall be: PSNH, CRR, Consumer Advocate, the Business and Industry Association, and the commission staff. The commission would appreciate a typewritten list of any citations referred to during the argument or which parties deem important for the commission to consider.

The commission believes that the foregoing report and the order attached hereto provides the necessary procedures to close this case and move toward issuing a report and order in this proceeding. To the extent other actions are necessary for the commission to bring this case to a close, parties should bring such matters to the commission's attention expeditiously. Any motions, objections or requests not previously ruled on, except for objections, motions, or requests relating to admission of exhibits, are hereby denied.

Our order will issue accordingly.

SUPPLEMENTAL ORDER

Based on the foregoing REPORT REGARDING OUTSTANDING MOTIONS, CLOSING OF RECORD AND POST HEARING ARGUMENTS, which is incorporated herein by reference; it is hereby

ORDERED, that the outstanding motions, requests and objections in this docket are disposed of as discussed in the foregoing report; and it is

FURTHER ORDERED, that the dates and procedures set out in the foregoing report shall govern the closing of the record and provide for post hearing argument as therein provided.

By order of the Public Utilities Commission of New Hampshire this twenty-first day of December, 1987.

==========

NH.PUC*12/21/87*[60419]*72 NH PUC 573*Pennichuck Water Works, Inc.

[Go to End of 60419]

72 NH PUC 573

Re Pennichuck Water Works, Inc.

DR 87-115
Supplemental Order No. 18,936
New Hampshire Public Utilities Commission
December 21, 1987

ORDER setting a procedural schedule in the matter of a disputed water service area.

CERTIFICATES, § 166 — Procedure — Procedural schedules — Revocation of certificate authority.

[N.H.] A procedural schedule for the receipt of additional facts and information was established in a case in which a water utility sought authorization to serve an area upon the revocation of another water utility's right to serve the area.

APPEARANCES: As previously noted.

By the COMMISSION:

REPORT

On June 19, 1987 Pennichuck Water Works, Inc. (Pennichuck) filed a petition to engage in business as a public utility in a limited area in the town of Amherst. On July 30, 1987 a duly noticed Prehearing Conference was held. By Report and Order No. 18,755, the Commission approved a procedural schedule stipulated by the parties in said Prehearing Conference (72 NH PUC 303).

Subsequently, Southern New Hampshire Water Company, Inc. (Southern) filed a motion to dismiss the petition by Pennichuck. In response the Commission issued its Report and Order No. 18,836 scheduling a hearing on December 8, 1987, wherein Pennichuck would show cause as to why its petition should not be dismissed. (72 NH PUC 432).

During the scheduled hearing the parties to the docket presented oral arguments on the merits of their respective positions. After reviewing the arguments, the Commission ruled from the bench that Pennichuck had made sufficient allegations to allow it to go forward under RSA 374:28. We, therefore, vacated Report and Order No. 18,836. The Commission also required Pennichuck to amend its petition to state facts which address the allegations it makes under RSA 374:28. Said facts to demonstrate why Pennichuck is better than Southern as a qualified water carrier within the petitioned franchise area, thus rationalizing why Southern should have its current franchise rights within the petitioned area revoked.

Whereupon the Commission recessed the December 8, 1987 hearing and the parties held a

conference to establish a revised procedural schedule. After the conference the parties presented the following schedule for Commission approval:

Event Date
Pennichuck files revised petition. 12/18/87
Pennichuck files testimony. 1/29/88
Staff & Intervenors data requests
to Pennichuck. 2/26/88
Pennichuck response to data
requests. 3/18/88
Intervenor and staff files
testimony. 4/13/88
Pennichuck data requests to staff
and intervenors. 4/29/88
Staff & intervenor response to
data requests. 5/27/88
Hearing dates. 7/12,13,14/88

Upon consideration the Commission believes the proposed schedule is reasonable and accordingly will approve such.

Our Order will reflect the acceptance of this schedule and also the dismissal of Southern's motion to dismiss the petition by Pennichuck.

Our Order will issue accordingly.

Page 573

SUPPLEMENTAL ORDER

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

ORDERED, that Southern New Hampshire Water Company's Motion to Dismiss Pennichuck Water Works, Inc.'s petition requesting a franchise in a limited area of the Town of Amherst be, and hereby is, rejected; and it is

FURTHER ORDERED, that Pennichuck Water Works, Inc. revise said petition to expand on the facts it makes in favor of revoking Southern's franchise rights in a limited area in the Town of Amherst; and it is

FURTHER ORDERED, that the procedural schedule proposed by the parties to the instant docket, and described in the attached report, be, and hereby is, approved.

By order of the Public Utilities Commission of New Hampshire this twenty-first day of December, 1987.

==========

72 NH PUC 574

Re Chichester Telephone Company, Inc.

DR 87-235
Order No. 18,938

New Hampshire Public Utilities Commission

December 22, 1987

PETITION by local exchange carrier for approval of the replacement of rural-line service with fourparty service; granted.

SERVICE, § 467 — Telephone — Rural line connections — Four-party service.

[N.H.] A local exchange telephone carrier was allowed to eliminate its business and residential rural-line services, and replace them with fourparty services, where the change would not affect the quality or cost of service to either business or residential customers.

By the COMMISSION:

ORDER

WHEREAS, on November 23, 1987, Chichester Telephone Company, Inc. filed with the commission its tariff NHPUC No. 3 — Telephone superceding NHPUC No. 3, Sheet 1 Fourth Revision, Section 2, Sheet 1 Fifth Revision in which it proposed to eliminate Chichester's business and residential rural line service in its territory by replacing business and residential rural line service with business and residential four-party service; and

WHEREAS, the filing does not substantially affect business customers as no business customers currently subscribe to rural line service; and

WHEREAS, residential customers pay the same rate for four-party service as for rural line service; and

WHEREAS, no other telephone company operating in New Hampshire offers rural line service; and

WHEREAS, the only difference between four-party and rural line service is that the latter may have more than four parties on a multi-party line; it is therefore

ORDERED, that Section 2, Sheet 1, Fifth Revision be, and hereby is, adopted.

By order of the Public Utilities Commission of New Hampshire this twenty-second day of December, 1987.

==========

NH.PUC*12/22/87*[60421]*72 NH PUC 575*Merrimack County Telephone Company

[Go to End of 60421]

72 NH PUC 575

Re Merrimack County Telephone Company

DR 87-240
Order No. 18,939

New Hampshire Public Utilities Commission

December 22, 1987

ORDER accepting corrections to schedules detariffing mobile and paging customer premises equipment.

RATES, § 559.1 — Telephone — Mobile customer premises equipment — Detariffing.

[N.H.] Corrections were made to a local exchange telephone carrier's tariff provisions detariffing mobile and paging customer premises equipment.

By the COMMISSION:

ORDER

WHEREAS, on November 30, 1987, Merrimack County Telephone filed with the commission the following tariffs concerning the detariffing of mobile and paging customer premises equipment (CPE) and two mobile tariff corrections:

PART VII — Mobile — Section 1

Page 1 First Revision Canceling Original
Page 2 First Revision Canceling Original
Page 3 First Revision Canceling Original
Page 4 Second Revision Canceling First
Page 5 First Revision Canceling Original
Page 6 First Revision Canceling Original
Page 7 First Revision Canceling Original
Page 8 First Revision Canceling Original
Page 9 First Revision Canceling Original
Page 10 First Revision Canceling Original
Page 11 First Revision Canceling Original
Page 12 Second Revision Canceling First
Page 13 Second Revision Canceling First
Page 14 Second Revision Canceling First
Page 15 First Revision Canceling Original

PART VIII — Personal Paging Service — Section 1

Page 1 Second Revision Canceling First
Page 2 Second Revision Canceling First
Page 3 First Revision Canceling Original;

and

WHEREAS, the filing complies with Federal Communications Commission directives concerning the detariffing of CPE; and

WHEREAS, the correction concerning mobile service deposits reflects that established in the Company's general regulations; and

WHEREAS, the correction of restoral charges brings them into conformity with existing restoral charges in Part VI of the Company's tariff; and

WHEREAS, the latter correction has no effect on customers; and

WHEREAS, upon review of the petition the commission finds the revisions to be in the public good; it is hereby

ORDERED, that the Company submit annotated tariffs as required by Puc 1601.05(k) conforming to this order; and it is

FURTHER ORDERED, that the above noted tariff revisions become effective January 1, 1988.

By order of the Public Utilities Commission of New Hampshire this twenty-second day of December, 1987.

==========

NH.PUC*12/24/87*[60422]*72 NH PUC 576*Industrial Cogenerators Corporation

[Go to End of 60422]

72 NH PUC 576

Re Industrial Cogenerators Corporation

DR 86-108
Order No. 18,942

Re American Cogenics

DR 86-119
Order No. 18,942

Re Enesco Merrimack Cogeneration, Inc.

DR 86-121
Order No. 18,942

Re Kearsarge Power and Light

DR 86-124

Order No. 18,942

Re Plaistow Power and Light

DR 86-126
Order No. 18,942

Re A. Johnson Cogen, Inc.

DR 86-132
Order No. 18,942

Re Cygna Energy Services

DR 86-133
Order No. 18,942

New Hampshire Public Utilities Commission

December 24, 1987

ORDER affirming a previous rejection of longterm rates filed by seven small power producers.

COGENERATION, § 25 — Rates — Long-term avoided cost pricing — Rejection of rate proposals.

[N.H.] The commission affirmed an earlier decision to dismiss long-term rate proposals filed by seven small power production (SPP) facilities, where, given the principles of avoided-cost pricing and the amount of SPP capacity becoming available, that action was found to have been imperative to prevent ratepayers from subsidizing SPP through being required to pay rates above avoided costs; the commission's solution, prioritizing SPP facilities according to the value of their production to a purchasing utility and society, and rejecting long-term rate filings of those not ranking high enough on the list, was confirmed.

APPEARANCES: Sulloway, Hollis and Soden by Margaret Nelson, Esq. for Public Service Company of New Hampshire; Brown, Olson, and Wilson by Peter W. Brown, Esq. for American Cogenics, Inc.; Orr and Reno by Howard M. Moffet, Esq. for Industrial Cogenerators Corp.; Michael Holmes, Esq. and Joseph W. Rogers, Esq. for the Office of the Consumer Advocate; Martin C. Rothfelder, Esq. for the commis- sion and for the commission staff.

By the COMMISSION:

REPORT

I. PROCEDURAL HISTORY

On January 7, 1987, the commission issued Report and Order No. 18,530 (72 NH PUC 8), (Order 18,530) which, inter alia, dismissed the seven above-referenced petitions for long term avoided cost rates filed pursuant to Re Small Energy Producers and Cogenerators, Docket No. DE 83-62, 69 NH PUC 352, 61 PUR4th 132 (1984) and Re Small Energy Producers and Cogenerators, Docket No. DR 85-215, 70 NH PUC 753, 69 PUR4th 365 (1985), (hereafter

referred to as DE 83-62 and DR 85-215, respectively). On January 27, 1987, motions for rehearing were filed by Industrial Cogenerators Corporation (ICC), American Cogenics, Inc. (ACI), the Office of the Consumer Advocate, and the Campaign for Ratepayers Rights. Public Service Company of New Hampshire (PSNH) filed responses to each of those motions for rehearing on February 26, 1987.

In Report and Supplemental Order No. 18,586 (Order 18,586), the commission granted the motions for rehearing in part and denied them in part (72 NH PUC 77). In Order 18,586, the commission found

Page 576

that the motions for rehearing raised four broad issues as follows (72 NH PUC at 78, 79):

1. whether the commission erred in characterizing or relying on its orders in Re Public Service Co. of New Hampshire, Docket No. DF 84-200;

2. whether the Public Utility Regulatory Policies Act (PURPA) and the Limited Electrical Energy Producers Act (LEEPA) allow discrimination based on fuel type;

3. whether the methodology established by DE 83-62, and DR 85-215 has been improperly amended by Order 18,530; and

4. whether the procedure used by the commission was consistent with due process requirements.

The commission denied rehearing with respect to the first three of these issues but granted rehearing on the issue of due process. Accordingly, a procedural schedule was established to give all parties the opportunity to address the information relied upon by the commission in reaching its decision and to identify deficiencies in the commission's analysis.

Pursuant to the procedural schedule, the commission staff pre-filed a technical paper identifying and analyzing the factual information relied on by the commission. At the rehearing held on May 12, 1987 the parties cross examined the staff witness responsible for filing the technical paper and were also given the opportunity to present their own testimony. Only PSNH submitted pre-filed testimony and presented it at the rehearing.

During the May 12, 1987 rehearing, upon ACI's oral motion to strike, the com10mission disallowed certain portions of PSNH's oral and written testimony as outside the scope of the instant docket. PSNH filed a motion for rehearing on June 1, 1987 and an errata sheet on June 3, 1987, praying that if the record does not support dismissal of the long term rate petitions, the commission grant a rehearing on its decision to strike and upon rehearing, allow PSNH to present additional testimony relevant to this matter.

Following the May 12, 1987 rehearing, the commission directed the parties to present post hearing briefs or legal memoranda. On June 3, 1987 PSNH filed its trial brief. ACI filed, on June 5, 1987, a memorandum of law in support of its petition. No other party filed a post hearing brief or legal memoranda. However, ICC presented a letter dated June 5, 1987 to the commission "to record ICC's understanding with respect to procedural and factual issues raised by the May 12, 1987 hearing and the legal memoranda filed ... [with the commission]." Page 2. Subsequently, by

letter dated June 11, 1987, PSNH filed a response to the letter of ICC.

On October 2, 1987, the commission issued Supplemental Report and Order No. 18,863 which allowed parties ten (10) days to request the opportunity to amend or add to their post hearing submittals (72 NH PUC 574). No party requested such an amendment or addition.

II. POSITION OF THE PARTIES

PSNH

In its trial brief, PSNH asserts that the commission is entitled to and indeed, must dismiss the seven petitions before it in this proceeding.

First, PSNH argues that five of the seven petitioners have not filed motions for rehearing or taken any action to protect their rights, and, therefore, there is no justifiable issue for the commission to resolve for those petitioners. Further, PSNH avers that the Consumer Advocate cannot preserve the rights of those petitioners through his motion for rehearing and appeal.

Second, PSNH states that the commission has clearly complied with the statutory requirements of RSA 541-A: 18 and

protected any "due process" rights of the petitioners, and that therefore the petitioners cannot claim that the commission's actions violate their statutory or constitutional rights.

Third, PSNH contends that the record fully supports dismissal of the petitions because the evidence demonstrates that vastly changed circumstances have affected the methodology used to develop the avoided cost rates and resulted in rates that exceed PSNH's avoided cost. PSNH argues that to allow the petitioners to receive DR 85-215 long term avoided cost rates would violate both PURPA and LEEPA.

ACI

ACI alleges that the commission has not met its burden of specifying the evidence, facts, information and material on which it relied on in reaching its decision. In its memorandum of law, ACI concludes that the commission should reverse its Order 18,530 and grant ACI's petition for DR 85-215 long term avoided cost rates.

ACI argues that the commission has officially noticed only the staff's technical paper and neither the paper or staff's oral testimony support the existence of a stipulated limitation on small power production capacity under DE 83-62 and DR 85-215. Further, ACI argues that staff's technical paper was not known to or relied upon by the commission prior to rendering its decision in its Order 18,530 dismissing the subject petitions.

Last, ACI argues that even if there is a limitation on the amount of small power production capacity, the capacity limit has not yet been reached and, therefore ACI is entitled to a rate under DR 85-215. ACI claims that it has complied with all the requirements of DE 83-62 and DR 85-215 and states that there is no reason why it should not be eligible for DR 85-215 rates.

III. COMMISSION ANALYSIS.

As discussed above, the purpose of the rehearing was to provide the parties to this

proceeding with the factual and technical information on which the commission relied in deciding to dismiss the subject seven long term rate petitions. The parties have been given the opportunity to address the information before the commission, including the opportunity to file their own testimony. Based on our review of the record in this proceeding and the post hearing legal memorandum presented by PSNH and ACI, we are re-confirming our decision to dismiss.

In the discussion below, the commission briefly reiterates the grounds for its action to dismiss the seven petitions and then address the arguments raised by the parties in the instant proceeding.

Pursuant to the federal statute PURPA and the state statute LEEPA, in DE 83-62 the commission set short and long term avoided cost rates for small power producers and cogenerators (SPPs) willing to sell to PSNH. The commission subsequently updated the avoided cost rates in DR 85-215, relying on the methodology developed in DE 83-62. Under the process developed in DE 83-62, a SPP must petition the commission to receive rates from PSNH. Historically, the petitioners apply for rates that are in effect at the time the petition is filed. In deciding whether to provide those rates to a petitioner, the commission must necessarily consider whether granting the petition will meet the statutory criteria of PURPA and LEEPA.

PURPA, LEEPA, other New Hampshire statutes and the rules implementing PURPA provide the commission considerable discretion in methodology and implementation. However, it is incumbent upon the commission to administer purchases of SPP electric energy and capacity by utilities in a manner designed to bring about the goals of the statutes.

In rendering its decision in Order 18,530, the commission made certain implicit findings of fact. Those findings are put forth in Order 18,586 (page 4). In brief, those factual findings relate to (72 NH PUC at 79):

1. the generally applicable economic theory for avoided cost ratemaking;

2. the avoided cost methodology in DE 83-62 and DR 85-215; and

3. the amount of QF energy and capacity being offered for sale pursuant to DR 85-215.

Based on these findings, the commission established priorities among SPPs to ensure that ratepayers do not subsidize SPPs by being required to pay rates that are above avoided costs. The commission distinguished between two classes of SPPs — fossil fuel based and non-fossil fuel based — and assigned a higher "value" to the non-fossil fuel based projects. As further developed in orders 18,530 and 18,586, it was our intent to establish a ranking of SPP development by distinguishing among categories of SPPs based on the "value" of the SPP to the purchasing electric utility and to society. We did not intend to discriminate among individual QFs of equal "value".

The commission determined that the amount of SPP capacity that could reasonably be granted DR 85-215 long term avoided cost rates would be exhausted before consideration of the seven fossil fuel based projects that are the subject of this proceeding. As noted in Orders 18,530 and 18,586, consideration of this next tier of projects must be deferred until our findings in Re Small Energy Producers and Cogenerators, Docket No. DR 86-41.

In taking the action to dismiss the seven long term rate petitions, we necessarily relied upon both our own and our staff's knowledge and expertise in the areas relating to avoided cost rate making. We recognized, however, in our Order 18,586 granting rehearing, that these determinations were made without the benefit of a record and without providing the parties the opportunity to be heard. Therefore, we rectified this deficiency by establishing an appropriate procedural schedule including a rehearing.

Through a staff technical paper we provided the parties with the technical and factual information upon which our determination had been based. At the rehearing the parties were permitted to cross examine the principal staff member responsible for preparing the technical paper. Further, all parties were provided the opportunity to present their own testimony and point out any deficiencies in our analysis. Despite the fact that we made it plain that we were prepared to change our analysis if the record developed upon rehearing so warranted, no party sought to present testimony that contested or pointed out deficiencies in our analysis. Rather, the only testimony, submitted by PSNH, generally supported our findings and actions.

In its memorandum of law, ACT argues that we failed to present any facts or information on which we relied in rendering our decision to limit the amount of SPPs that could receive DR 85-215 rates. We disagree. A review of our prior orders and the record in this instant proceeding indicates that the technical and factual information identified in staff's technical paper clearly require dismissal of the seven long term rate petitions and that this information not only forms the basis of our decision herein but was implicit in our earlier findings, see Order 18,586; page 4 for a listing of the implicit factual findings in Order 18,530 (72 NH PUC 8).

The first section of staff's technical paper discusses generally applicable economic theory to avoided cost pricing and illustrates the relationship between avoided costs and the amount of SPP power purchased by an electric utility. As illustrated in staff's technical paper, a utility's avoided costs decline as it adds more SPP power to its system, all other things being equal. Thus, the situation which confronted the commission due to the large number of SPPs seeking DR 85-215 is readily apparent when viewed against this theoretical background.

The second section of staff's technical paper demonstrates that the DE 83-62 methodology used to calculate DR 85-215 rates did not anticipate or provide a mechanism

to address the large numbers of SPPs that petitioned the commission in 1986 as DR 85-215 rates became more and more attractive in a time of falling oil prices and interest rates. Staff's technical paper established that a 50 MW decrement is a fundamental component of PSNH's avoided cost rate calculation. Staff noted that, based solely on the fact that the avoided cost estimates are calculated on a 50 MW decrement, a 50 MW limit or "cap" on SPP purchases is appropriate. However, as the technical paper indicates, the methodology provided for a forecast of SPP that must also be considered in setting a "cap". Taking into consideration the 50 MW decrement and the SPP forecast, a range from 141.259 MWs to 215.11 MWs is a reasonable range of the amount of SPP we could approve under the DE 83-62 methodology.

At the date of the hearing, the commission had already approved a total of 185.89 MW (net) of SPP, therefore it is apparent that we could not consider the approximately 200 MWs of

additional fossil fuel based SPPs that had petitioned to sell to PSNH. Rather, approval of the next block of SPP must be based on updated rates reflecting a new measurement of the costs the SPPs allow the utility to avoid.

ACI is correct that the methodology established in DE 83-62 did not provide a stipulated limitation as to the amount of SPP purchases that could receive DR 85-215 rates. This methodology, however, reflected the expectation of the commission, its staff, PSNH and other interested parties, based on the best information available at the time. As we have already indicated in our prior orders, the circumstances that face us were simply not anticipated and therefore, it would not be reasonable to expect the methodology to provide a mechanism that addressed this situation. As ACI has conceded, in the event of extraordinary changes in circumstances, we have the authority to act swiftly to account for such changes under appropriate assurances of due process.

Finally, ACI has argued that even if a limit or cap on the amount of SPP that can receive DR 85-215 rates does exist, the addition of its 22 MW fossil fuel based SPP project would fall within the range identified in staff's technical paper. ACI's argument fails to recognize that the commission cannot indiscriminately choose between projects of equal "value". The total amount of fossil fuel based SPPs offered to us is approximately 200 MWs: it is this block of capacity that falls outside a reasonable range. Further, the range established in Staff's technical paper is computed based on a SPP forecast with a horizon of 28 years. It would be inappropriate for us to focus solely on the higher end of this range which is computed based on the later years for a project desiring to come on-line in the earlier years of the forecast period.

PSNH argues in brief that the commission should dismiss five of the subject long term rate petitions on the grounds that they did not seek rehearing of Order 18,530, even though the Consumer Advocate did seek such rehearing on their behalf. Further, PSNH's motion for rehearing of June 1, 1987 requests rehearing on the issue of the scope of PSNH's testimony, should the commission decide that the record does not support dismissal of the seven petitions.

Our instant decision to re-confirm our determinations in Order 18,530 to dismiss all seven petitions makes it unnecessary to address the validity of PSNH's argument concerning the five petitions and renders PSNH's motion for rehearing moot. Therefore we will consider these issues closed.

Our order will issue accordingly.

ORDER

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

ORDERED, that upon rehearing the commission's decision to dismiss the above referenced long term rate petitions be, and hereby is, re-confirmed.

By order of the Public Utilities Commission of New Hampshire this twenty-fourth day of December, 1987.

==========

NH.PUC*12/28/87*[60424]*72 NH PUC 581*Manchester Water Works

[Go to End of 60424]

72 NH PUC 581

Re Manchester Water Works

DE 87-229
Order No. 18,943

New Hampshire Public Utilities Commission

December 28, 1987

ORDER nisi authorizing a municipal water utility to extend its service area.

SERVICE, § 204 — Extensions — Municipal water utility — Service beyond municipal limits.

[N.H.] A municipal water utility was conditionally authorized to extend its mains and service to a portion of a town located beyond its municipal boundaries where (1) no other utility had franchise rights in the area to be served, (2) the area would be served under the regularly filed tariff of the utility, (3) the selectmen of the town to be served were in accord with the requested extension, and (4) the commission was satisfied that the extension would be in the public good.

By the COMMISSION:

ORDER

WHEREAS, Manchester Water Works, a water public utility operating under the jurisdiction of this Commission in areas served outside the City of Manchester, by a petition filed November 23, 1987, seeks authority under RSA 374:22 and 26 as amended, to further extend its mains and service in the Town of Hooksett; and

WHEREAS, no other water utility has franchise rights in the area sought, and the Petitioner submits that the area will be served under its regularly filed tariff; and

WHEREAS, the Board of Selectmen, Town of Hooksett, has stated that it is in accord with the petition; and

WHEREAS, after investigation and consideration, this Commission is satisfied that the granting of the petition will be for the public good; and

WHEREAS, the public should be offered an opportunity to respond in support or in opposition before the Commission acts on this petition; it is hereby

ORDERED, that all persons interested in responding to the petition be notified that they may submit their comments to the Commission or may submit a written request for a hearing in this matter no later than January 13, 1988; 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 January 6, 1988 and designated in an affidavit to be made on copy of this Order and filed with this office on or before January 20, 1988; 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 in the Town of Hooksett 210 feet east of the intersection of Mammoth Road and West Auburn Road, thence along the southerly line of West Auburn Road 692 feet to the easterly limits of Lot 15, Map 34, thence southerly along the easterly lines of Lots 15 and 16 to the existing limits of the franchise as authorized in docket DE 86-75 and Order No. 18,190 (71 NH PUC 199), thence westerly and northerly by the boundary of Lot 16 to the point of beginning; intending to include a block area including Lots 15 and 16 as shown on tax maps of the Town of Hooksett.

and it is

FURTHER ORDERED, that such authority shall be effective on January 20, 1988

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 twenty-eighth day of December, 1987.

==========

NH.PUC*12/28/87*[60425]*72 NH PUC 582*Manchester Water Works

[Go to End of 60425]

72 NH PUC 582

Re Manchester Water Works

DE 87-230
Order No. 18,944

New Hampshire Public Utilities Commission

December 28, 1987

ORDER nisi authorizing a municipal water utility to extend its service area.

SERVICE, § 204 — Extensions — Municipal water utility — Service beyond municipal limits.

[N.H.] A municipal water utility was conditionally authorized to extend its mains and service to a portion of a town located beyond its municipal boundaries where (1) no other utility had franchise rights in the area to be served, (2) the area would be served under the regularly filed

tariff of the utility, (3) the selectmen of the town to be served were in accord with the requested extension, and (4) the commission was satisfied that the extension would be in the public good.

By the COMMISSION:

ORDER

WHEREAS, Manchester Water Works, a water public utility operating under the jurisdiction of this Commission in areas served outside the City of Manchester, by a petition filed November 23, 1987, seeks authority under RSA 374:22 and 26 as amended, to further extend its mains and service in the Town of Hooksett; and

WHEREAS, no other water utility has franchise rights in the area sought, and the Petitioner submits that the area will be served under its regularly filed tariff; and

WHEREAS, the Board of Selectmen, Town of Hooksett, has stated that it is in accord with the petition; and

WHEREAS, after investigation and consideration, this Commission is satisfied that the granting of the petition will be for the public good; and

WHEREAS, the public should be offered an opportunity to respond in support or in opposition before the Commission acts on this petition; it is hereby

ORDERED, that all persons interested in responding to the petition be notified that they may submit their comments to the Commission or may submit a written request for a hearing in this matter no later than January 13, 1988; 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 January 6, 1988 and designated in an affidavit to be made on copy of this Order and filed with this office on or before January 20, 1988; 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 in the Town of Hooksett 1,000 feet more or less northeast of Londonderry Turnpike at the northeasterly limits of the franchise as authorized by the Public Utilities Commission under DE 86-73; thence easterly along the northern property lines of Lots 49-1, 49-3 and 49-4; thence southerly along the Hooksett-Auburn town lines to

Page 582

---

the existing franchise limits; thence westerly and northerly to the point of beginning. Intending to include all unfranchised properties in the Town of Hooksett, east of Londonderry Turnpike, west of the Hooksett-Auburn town line and south of the northerly property lines of Lots 49-1, 49-3, and 49-4 inclusive as indicated on the tax map of the Town of Hooksett.

and it is

FURTHER ORDERED, that such authority shall be effective on January 20, 1988 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 twenty-eighth day of December, 1987.

==========

NH.PUC*12/28/87*[60426]*72 NH PUC 583*Pinetree Power — Tamworth, Inc.

[Go to End of 60426]

72 NH PUC 583

Re Pinetree Power — Tamworth, Inc.

DE 87-231
Order No. 18,945

New Hampshire Public Utilities Commission

December 28, 1987

ORDER authorizing a small power producer to construct and maintain electric transmission lines over and across public waters.

ELECTRICITY, § 7 — Authorization for transmission lines — License to cross public waters — Small power producer.

[N.H.] A small power producer was authorized to construct and maintain electric transmission lines over and across public waters where (1) the crossing was necessary for the small power producer to interconnect with an electric utility, (2) all necessary easements had been obtained, and (3) no relevant state agency or interested party opposed the authorization; the authorization was conditioned upon all construction meeting the requirements of the National Electric Safety Code and all other applicable safety standards.

By the COMMISSION:

ORDER

WHEREAS, on November 25, 1987, Pinetree Power — Tamworth, Inc. (PPTI) filed with this Commission its petition under RSA 371:17 for a license to construct and maintain a 34.5 KV overhead transmission line across the Chocorua River in the Town of Tamworth, New Hampshire; and

WHEREAS, on December 11, 1987, the petitioner filed an amended petition; and

WHEREAS, PPTI is the developer and owner of a 20 megawatt Wood Chip Fired Power Project located on a 55 acre site along New Hampshire Route 41 in the Town of Tamworth, New Hampshire; and

WHEREAS, in order for the facility to interconnect into the Public Service Company of New Hampshire transmission system, it is necessary for the construction of a 34.5 KV circuit over and across the Chocorua River; and

WHEREAS, the location of the crossing the Petitioner is seeking to license is indicated on submitted Exhibit A with minimum vertical clearance shown on submitted Rist-Frost Drawing No. SK-E2; and

WHEREAS, all necessary easements have been obtained; and

WHEREAS, the proposed transmission line would cross over the Chocorua River in the Town of Tamworth, just East of NH Route 41 and approximately 2.0 miles North of the intersection of NH Route 16 and NH Route 25 at West Ossipee, New Hampshire; and

WHEREAS, PPTI has contacted all relevant state agencies and other interested parties with no opposition being raised; and

WHEREAS, the definition of "Public Waters" contained in the limited purposes of

Page 583

RSA 371:17 includes "all ponds of more than ten acres, tidewater bodies, and such streams or portions thereof as the commission may prescribe"; and

WHEREAS, the commission prescribes the subject crossing to be under and across public waters; and

WHEREAS, the commission finds such water crossing necessary for the Petitioner to interconnect in accordance with RSA 362-A, thus it is in the public interest; and

WHEREAS, the commission may authorize the petition without hearing when all interested parties are in agreement pursuant to RSA 371:20; it is

ORDERED, that the Petitioner is hereby authorized, pursuant to RSA 371:17 and 20 to construct and maintain electric lines over and across the Chocorua River in the Town of Tamworth, New Hampshire; and it is

FURTHER ORDERED, that all construction meet the requirements of the National Electrical Safety Code and all other applicable safety standards.

By order of the Public Utilities Commission of New Hampshire this twenty-eighth day of December, 1987.

==========

NH.PUC*12/28/87*[60427]*72 NH PUC 584*Pinetree Power — Tamworth, Inc.

[Go to End of 60427]

72 NH PUC 584

Re Pinetree Power — Tamworth, Inc.

DE 87-253
Order No. 18,946

New Hampshire Public Utilities Commission

December 28, 1987

ORDER authorizing a small power producer to construct and maintain electric transmission lines over and across railroad property.

ELECTRICITY, § 7 — Authorization for transmission lines — License to cross public waters — Small power producer.

[N.H.] A small power producer was authorized to construct and maintain electric transmission lines over and across railroad property where (1) the crossing was necessary for the small power producer to interconnect with an electric utility, (2) all necessary easements had been obtained, and (3) no relevant state agency or interested party opposed the authorization; the authorization was conditioned upon all construction meeting the requirements of the National Electric Safety Code and all other applicable safety standards.

By the COMMISSION:

ORDER

WHEREAS, on December 11, 1987, Pinetree Power — Tamworth, Inc. (PPTI), filed with this commission its petition under RSA 371:24 for approval to construct, own, operate and maintain a 34.5 KV overhead transmission line across certain railroad property of the Boston and Maine Corporation in the Town of Tamworth, New Hampshire; and

WHEREAS, PPTI is the developer and owner of a 20 megawatt Wood Chip Fired Power Project located on a 55 acre site along New Hampshire Route 41 in the Town of Tamworth, New Hampshire; and

WHEREAS, PPTI's proposed interconnecting transmission line would cross the land and tracks of the Boston and Maine between proposed Poles I-26 and I-24 as indicated in submitted Exhibit B — Site Plan No. 3, Rist-Frost Drawing E-3; and

WHEREAS, the subject transmission line is to interconnect the project with existing Public Service Company of New Hampshire power lines; and

WHEREAS, PPTI has obtained an easement with an agreed upon price from the railroad company for the purpose of the construction, ownership, operation and maintenance of the subject line; and

WHEREAS, PPTI has contacted the parties and relevant state agencies affected by

the proposed transmission line with no objection or opposition being raised; and

WHEREAS, the interconnecting transmission line will be constructed in compliance with the National Electrical Safety Code and other applicable codes so as to not interfere with the normal operation of the railroad; and

WHEREAS, the commission finds such construction to be in the public good in accordance with RSA 362-A; it is

ORDERED, that the petitioner be authorized, pursuant to RSA 371:24 to construct, own, operate and maintain 34.5 KV electric lines over and across certain railroad property of the Boston and Maine Corporation in the Town of Tamworth, New Hampshire; and it is

FURTHER ORDERED, that all construction meet requirements of the National Electrical Safety Code and other applicable safety standards.

By order of the Public Utilities Commission of New Hampshire this twenty-eighth day of December, 1987.

==========

NH.PUC*12/30/87*[60428]*72 NH PUC 585*Public Service Company of New Hampshire

[Go to End of 60428]

72 NH PUC 585

Re Public Service Company of New Hampshire

DR 87-228
Order No. 18,950

New Hampshire Public Utilities Commission

December 30, 1987

ORDER authorizing an electric utility to change its energy cost recovery mechanism rate.

---

1. AUTOMATIC ADJUSTMENT CLAUSES, § 13 — Energy cost clauses — Purchased power — Recovery of reservation fee associated with power purchased from Hydro-Quebec — Electric utility.

[N.H.] An electric utility was authorized to pass through its energy cost recovery mechanism (ECRM) the energy reservation fee charged to the utility by the New England Power Pool (NEPOOL) for emergency energy purchased by the utility from Hydro-Quebec; the amount of the reservation fee to be recovered by the utility was limited to the amount of energy savings gleaned by the utility from the emergency power purchase transactions and the amount of recov10ery must be adjusted in the ECRM when NEPOOL adjusts the total fee. p. 586.

2. AUTOMATIC ADJUSTMENT CLAUSES, § 7 — Energy cost clauses — Unit availability incentive feature — Electric utility.

[N.H.] A proposal to adjust the methodology for calculating the unit availability incentive feature of an electric utility's energy cost recovery mechanism (ECRM) was rejected; the commission found that the existing methodology was consistent with a prior order that stated that there should be no change in the current ECRM methodology pending the utility's request for rate recognition of the Seabrook nuclear generating station. p. 587.

3. AUTOMATIC ADJUSTMENT CLAUSES, § 7 — Energy cost clauses — Unit availability incentive feature — Electric utility.

[N.H.] The Millstone unit 3 nuclear generating facility was not included in the calculation of the unit availability feature of an electric utility's energy cost recovery mechanism because the unit had no operational history on which to base a target availability factor. p. 588.

4. AUTOMATIC ADJUSTMENT CLAUSES, § 9 — Energy cost clauses — cost elements — Long term small power production contracts.

[N.H.] In a proceeding to adjust the energy cost recovery mechanism rate of an electric utility, the commission determined that it would be appropriate to address the possibility of removing the cost of long term small power production contracts from the energy cost recovery mechanism rate; nevertheless, it deferred action on the matter to a subsequent proceeding. p. 588.

APPEARANCES: Eaton W. Tarbell, Jr., Esquire of Sulloway, Hollis and Soden, and

Gerald Eaton, Esquire representing Public Service Company of New Hampshire; Daniel D. Lanning and Mark Collin for NHPUC Staff.

By the COMMISSION:

REPORT

This docket was initiated by a petition filed on November 23, 1987, by Public Service Company of New Hampshire (PSNH), a public utility providing electricity in the State of New Hampshire. The original petition requested a change in the ECRM rate from the July through December, 1987, rate of $3.177/100 KWH to a rate of $3.345/100 KWH for January through June 1988. On December 18, 1987, PSNH revised this re- quest from the rate of $3.345/100 KWH to $3.249/100 KWH.

A duly noticed hearing was held at the Commission's office in Concord on December 22, 1987, at which time PSNH made available seven (7) witnesses.

The increase of the filed ECRM rate over the current ECRM rate (July through December 1987) is predominately due to an increase in energy purchases from small power producers (S.P.P.).

According to PSNH witnesses the ECRM Component would be $2.432 per 100 KWH if SPP's were not included in the ECRM calculation. PSNH further points out that the rate paid to S.P.P.'s include both energy and capacity charges which in part accounts for the higher cost per KWH when compared to PSNH's oil, coal, or nuclear fired generation costs per KWH in ECRM.

Prior to the December 22, 1987 hearing the parties in the proceeding held a prehearing conference on December 14, 1987 where issues in the ECRM filing were defined and narrowed.

During the course of the hearings, several aspects of the filings were explored, some of which were:

1. The extended outage at Merrimack Unit 2;

2. Including Millstone III in the outage incentive feature of ECRM;

3. The declining cost of oil;

4. Separating the long term SPP rate from the ECRM Component calculation;

5. Capacity costs of the Hydro Quebec Emergency purchase;

6. The appropriate interest rate on over/ under collection of the ECRM component;

7. The refund of amounts paid ratepayers in anticipation of a revision to the Spaulding Hydro SPP contract; and

8. Coal inventory.

Several of these items merit further discussion.

I. The Hydro Quebec Emergency Purchase

[1] The New England Power Pool (NEPOOL) has contracted with HydroQuebec to purchase energy on an emergency basis. This purchase will be made by NEPOOL for all New England electric utilities. The cost will originally be allocated to PSNH based on its NEPOOL billing peak percentage for the power year. However, prior to the next ECRM period NEPOOL will reallocate these costs to its member utilities based on the outage service taken by each utility from NEPOOL during the current Hydro-Quebec contract period. PSNH has indicated that this emergency purchase is a firm energy purchase and as such requires an energy reservation charge. Staff and PSNH differ on how this energy reservation charge should be handled through ECRM. PSNH proposes to pass the cost of the energy reservation fee through ECRM but only to the extent that savings from energy purchased from Hydro-Quebec will

Page 586

offset the reservation costs. Staff believes that these costs should not be part of ECRM. The staff points out, through crossexamination of PSNH witnesses, that there is no mechanism which permits this fee to be passed through the ECRM calculation.

We believe that this fee is an appropriate part of the net energy cost/savings billed by NEPOOL. Therefore, this fee should be included as part of the NEPEX adjustment regularly collected by PSNH though the reconciliation of ECRM. The up front payment will be reconciled by NEPOOL and PSNH should not be charged for any more than their power needs required.

Accordingly we will allow the energy reservation fee charged by NEPOOL for its emergency energy purchase from Hydro-Quebec to pass through ECRM. The amount of the fee to be recovered by PSNH will be limited to the amount of energy savings gleaned by PSNH from the emergency transaction and will be adjusted in ECRM when NEPOOL adjusts the total fee.

We will, however, require that PSNH provide the Commission with a full accounting of this transaction both in the initial billing stage and following the reallocation.

II. Merrimack II Outage

[2] In Commission Report and Order No. 18,734 PSNH was required to provide a full reconciliation of the Merrimack Unit 2 outage which occurred in the spring of 1987 (72 NH PUC 277). During the hearing PSNH presented a witness to discuss this issue. The witness explained that this outage was used to replace worn parts of the unit which would extend its life and lower future maintenance costs and unplanned outages. The witness further explained that this outage extended one week beyond the planned period. PSNH was penalized for this extended outage through the unit availability incentive feature of ECRM.1(132)

Staff pointed out that, although PSNH incurred a penalty through this incentive feature, in the future PSNH would be given rewards through the same incentive feature because of this outage. Merrimack Unit 2 was down for repairs that are expected to reduce maintenance in the future periods. While performing those repairs PSNH increased the amount of overall unplanned outages incurred by Merrimack Unit 2 on average. This creates a multiplier effect which increases the reward PSNH will obtain through the availability incentive feature in the future. Therefore, staff believes some adjustment should be made to the calculation of the feature to reduce this effect.

In response to this PSNH cited Commission Report and Order No. 18,028 wherein the Commission states that the current ECRM methodology is adequate and there should not be any changes to said methodology prior to the rate case in which PSNH requests recognition of the Seabrook Station in ratebase (70 NH PUC 1,093).

We will uphold this precedent in the instant docket. The calculation of the availability incentive feature will remain the same as will the entire ECRM methodology. The procedure proposed here is consistent with the expressed terms of the Commission's order. We find no evidence to vary from our order.

III. Interest on Over/Under Collection of ECRM.

During the hearing staff asked PSNH if it would agree to change the interest rate applied to the under or over collection of ECRM from the current ten percent to the interest rate on customer deposits in accordance with Commission Report and Order No. 18,887 (72 NH PUC 516). This rate is tied to the prime interest rate offered by banks and will change on a quarterly basis. PSNH responded that management needed time to review this request. Therefore, this issue is to be addressed in the next ECRM filing (July thru December 1988). At that time PSNH and other parties are to present their arguments on the merits of this issue.

IV. Millstone III Outage Incentive.

[3] During the hearing PSNH indicated that Millstone Unit III was not included in the calculation of the unit availability incentive feature. This is because the unit has no history on which to base a target for availability of said unit. PSNH would prefer to leave this unit out of the incentive feature calculation until the Seabrook Station comes on line. This way PSNH can address the availability of both nuclear power generating units simultaneously.

Further, PSNH points out that not including Millstone III in the incentive feature has actually decreased the ECRM component. This is because actual availability of the unit has far exceeded the estimates of availability made by the Millstone III's principal owner, Northeast Utilities.

We will not include Millstone II in the availability incentive feature of ECRM. This is more appropriately included when some history can be developed.

V. The Cost of Long Term S.P.P. Contracts in ECRM.

[4] The final issue to address relates to S.P.P. rates approved by the Commission on a long term basis. These rates are fixed and, depending on the amount of power generated by S.P.P.'s, will be a relatively stable cost to PSNH. In light of this we believe it is appropriate to address the subject of removing these S.P.P. costs from ECRM and placing said costs in PSNH's basic, nonECRM rates. Accordingly, we will address this issue in an appropriate subsequent proceeding.

VI. Conclusion.

Based on the evidence provided we find the proposed ECRM component of $3.249 per 100 KWH to be just and reasonable and in the public good. We further mandate that PSNH provide a reconciliation of the cost for emergency power from HydroQuebec. Also, we will require that PSNH address the subject of changing the interest rate charged on over or under collections of ECRM, as well as the subject of long term S.P.P. rates as part of ECRM, in the next ECRM proceedings (July thru December 1988).

Our Order will issue accordingly.

ORDER

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

ORDERED, that PSNH shall file revised tariff pages setting an ECRM rate of $3.249/100 KWH for January through June 1988; and it is

FURTHER ORDERED, that the Small Power Producer rates for the hourly period categories of: "On-Peak" at $0.0378/ KWH; "Off-Peak" at $0.0280/KWH; and "all" at $0.0323 KWH for January through June 1988, be, and hereby are, approved.

By order of the Public Utilities Commission of New Hampshire this thirtieth day of December, 1987.

FOOTNOTES

[1]The unit availability incentive feature (or Net Unscheduled Outage Adjustment) establishes targets for planned and unplanned outages in each ECRM filing for the upcoming six month period. Unplanned outages are determined by the average of the unplanned outages actually

experienced for each unit during the last five year period.

==========

[Go to End of 60429]

72 NH PUC 589

Re Pennichuck Water Works

DE 87-22
Order No. 18,952

DE 87-23
Order No. 18,953

DE 87-26
Order No. 18,954

DE 87-27
Order No. 18,955

New Hampshire Public Utilities Commission

December 31, 1987

REPORT and orders authorizing a water utility to provide service in areas outside its then existing service area and authorizing the utility to file revised tariffs reflecting interim rates for service to those areas.

---

1. PUBLIC UTILITIES, § 121 — Water — Authorization to engage in utility business — Statutory requirements.

[N.H.] Under New Hampshire statute RSA 374:22, no person or entity may provide water service to the public or commence construction of plant to provide such service unless it has obtained commission approval; the commission must find that granting permission is in the public interest under RSA 374:26 and must further find under RSA 374:22 that requirements of the Water Supply and Pollution Control Commission and the Water Resources Board with regard to the suitability and availability of water have been met. p. 592.

2. CERTIFICATES, § 76 — Authority to provide utility service — Grounds for grant or refusal — Public good — Orderly development.

[N.H.] In order to determine that the granting of authority to provide utility service is in the public good the commission must find that a need for service exists and that the applicant for authority has the ability to provide the service; however, it is also the policy of the commission that the granting of new franchise areas be consistent with the orderly development of the region and that random "leap frogging" of service areas be avoided. p. 593.

3. CERTIFICATES, § 152 — Authority to provide utility service — Grounds for withdrawing authority — Service failure or discontinuance.

[N.H.] New Hampshire statute RSA 374:28 provides that the commission upon its own motion or upon petition of any interested party, may make an order withdrawing from a public utility its authority to engage in business in all or part of the territory in which it is authorized to operate whenever it shall find, after notice and public hearing that said utility has declined or unreasonably failed to render service in said territory or that its service in said territory is inadequate, no sufficient reason for such inadequacy appearing. p. 593.

4. SERVICE, § 210 — Extensions — Water utility — Expansion of service territory.

[N.H.] A water utility's request to extend its service area was approved as in the public good based, in part, on a finding that the extension would be consistent with the orderly development of the area to be served; however, the commission noted that the service area could be reassigned if the utility fails to make progress toward developing an integrated regional water system and another utility stands ready to provide service through an integrated system. p. 593.

5. RATES, § 595 — Water — Service to previously unserved area.

[N.H.] Where a water utility was authorized to extend its service to previously unserved areas, the commission established rates based on a methodology developed by the utility through consultation with commission staff; however, because of a lack of historical data upon which to base the rates, the rates were deemed interim and allowed to take effect only until one year of historical data becomes available; the interim rates were not made subject either to recoupment or refund should the permanent rates be set at a different level. p. 594.

---

i. SERVICE, § 210 — Extensions — Water utility — Expansion of service territory.

Page 589

[N.H.] Discussion of the procedural history leading to the issuance of a comprehensive report and orders regarding a water utility's petitions for authority to provide service in areas outside its then existing service areas and for approval of rate schedules for service to those areas. p. 590.

ii. RATES, § 630 — Interim rates — Service to previously unserved area — Water utility.

[N.H.] Discussion, in a proceeding to establish rates for water utility service to a previously unserved area for which no historical data was available, of the methodology employed for determining interim rates. p. 594.

APPEARANCES: Representing Pennichuck Water Works, Inc. Mary Ellen Kiley, Esq. and John B. Pendleton, Esq.; Representing Southern New Hampshire Water Co., James Hood, Esq. and Steven Camerino, Esq.; and for Commission Staff Daniel Lanning, Robert Lessels, Edward Schmidt and James Lenihan.

By the COMMISSION:

REPORT

I. PROCEDURAL HISTORY

[i] On February 20, 1987 Pennichuck Water Works Inc. submitted a petition for permission to serve limited areas of the Town of Derry as further described below and for approval of rate schedules. This petition was docketed as case DE 87-22. On February 20, 1987 a further petition was submitted to serve limited areas in the Town of Plaistow and for approval of rates. This was docketed as case 87-23. On February 25, 1987 further petitions were submitted to serve two additional areas of Derry and for approval of rates. These petitions were docketed as cases DE 87-26 and DE 87-27. With submittal of the latter petitions the company requested that a common record be developed for these two dockets for the sake of expedience and efficiency. This request has been generally accepted in these proceedings and has been expanded to include the earlier dockets DE 87-22 and DE 87-23. Therefore this report is structured as a comprehensive report on all four dockets. However, for purposes of defining conditions of the individual franchise areas and the rates to be charged, the four dockets remain separate and separate orders will be issued for each.

For completeness it should be noted that two additional petitions were initially considered in combination with the four petitions described above. However, they were subsequently segregated because of special circumstances pertaining to them. Case DE 87-36 (petition for franchise in Rochester) and Case DE 87-53 (petition for franchise in Stratham) are not considered here.

On February 25, 1987 a letter was received modifying page 2 of the petitions in dockets DE 87-22 and DE 87-23 to delete references to fire protection. On March 6, 1987 a letter was received transmitting a document titled "Technical Specifications for Water Distribution Systems" to replace exhibit A of the petition in DE 87-26.

On April 14, 1987 orders of notice were issued for each of the four dockets and setting a prehearing conference date of June 18, 1987 for all dockets. Notice of the conference was given in the local newspapers in Derry and Plaistow and affidavits of publication were provided to the Commission. On March 12, 1987 a petition to 10intervene was filed by Southern New Hampshire Water Company. On June 9, 1987 Pennichuck objected to this petition with respect to the Derry dockets DE 87-022, DE 87-026 and DE 87-027. At the June 18 conference a procedural schedule was established leading up to hearings on all four dockets during the period September 22-25, 1987. At the conference Southern New Hampshire Water Co. was granted full intervenor status for all four dockets.

On September 22, 1987 a memorandum of law was submitted on behalf of Southern, supporting their objections to the

petitions of Pennichuck Water Works in the four dockets.

On September 23, 1987 a letter was received from Mayor Paul P. Collette of Derry recommending that no action be taken concerning franchising of the entire Town of Derry, but that individual franchise petitions be considered on a case by case basis.

Hearings were held on September 22, 24 and 25, 1987 and on October 19, 1987. Testimony was provided on the general issues related to petitioner's overall plans and then separately for each of the four specific areas. Finally, Southern New Hampshire Water Company presented their case opposing the four petitions.

On October 28, 1987 Summation and Arguments were submitted on behalf of Pennichuck Water Works. Also on October 28, 1987 a Closing Argument was submitted on behalf of Southern New Hampshire Water Co.

II. DESCRIPTIONS OF PROPOSED FRANCHISE AREAS

A. Docket DE 87-22 The proposed franchise area includes 2 tracts. The first has been identified as Hi-Low Estates or as land owned by T & D Construction Co. and consists of approximately 61 acres situated on Taryn Road and Lorri Road in Derry, New Hampshire. Up to 28 dwellings will be constructed on this tract. The second tract identified as the adjacent land or as land of WZ Builders consists of 24 acres which includes 10 lots on North Shore Road and an additional subdivision located on Anna Circle both in Derry, New Hampshire. This second tract will ultimately contain 36 dwelling units. The total number of dwellings to be constructed in the proposed franchise area is 64. An existing well is located on the tract identified as Hi-Low Estates.

B. Docket DE 87-23 The proposed franchise area consists of approximately 45 acres located on Route 121-A in Plaistow, New Hampshire. It is further identified as land owned by Twin Ridge Associates Inc. A condominium project of approximately 88 units will be constructed on this land. A well has been installed on the land to serve the proposed condominium units.

C. Docket DE 87-26 The proposed franchise area consists of approximately 63 acres; situated on Route 102 in Derry, New Hampshire; which is owned by Richardson Properties Inc. A residential development known as "Cousins Farm" and containing up to 35 dwelling units will be constructed on the site. As of the date of the filing the construction of the dwelling units and the water system had not yet begun and no well been installed.

D. Docket DE 87-27 The proposed franchise area includes 2 tracts. The first consists of approximately 129 acres located on Derry Road in Derry, New Hampshire.

The property is owned by AR Larocque and Son Inc. and has been identified as Drew Woods. Up to 84 dwelling units are to be constructed on the property.

The second tract consists of approximately 135 acres owned by Richardson Properties, Inc. and is known as Poole Farm or also as the Adjacent Premises. Recently, it has also become known as Bliss Farm. It is intended that approximately 104 dwelling units be constructed on this second tract. There is an existing well supply and distribution system on the Larocque property but no facilities yet exist on the second tract.

E. LOCATION MAPS Each of the proposed franchise areas has been shown on maps submitted with the petitions and on exhibits provided during the hearings. However, to clarify the exact boundaries of each franchise, more detailed maps will be requested at the time franchises are assigned.

III. POSITIONS OF THE PARTIES

The Petitioner, Pennichuck Water Works takes the position that they have demonstrated the need for service and their ability to provide service to the proposed franchise areas in Derry and Plaistow. Furthermore they claim to have a demonstrated commitment of time and money in the systems being installed by the developers and

will embark on engineering studies of interconnecting the systems if awarded these franchises.

Pennichuck believes that in the absence of a showing by Southern that they can provide significantly better service, Pennichuck's petitions should be granted. They also state that Southern has failed to provide evidence that granting the petitions would adversely affect plans for interconnection of systems and regionalization.

Southern has intervened and taken the position that the proposed franchise areas should logically be assigned to them based on their presence in the area and their professed plan for ultimate interconnection of their existing systems and other areas radiating outward from their original core system in Hudson. They also claim that allowing Pennichuck to negotiate with developers in these areas will lead to a bidding war among water utilities which will increase water costs to their customers. Furthermore it was stated by two company witnesses that the only viable water source for the Derry franchises is the Merrimack River. Southern claims to be in a better position to provide Merrimack River water than Pennichuck due to their negotiations with Manchester Water Works and the intention to develop their own Merrimack River source. Finally, Southern has stated that they do not have to demonstrate that they will provide significantly better service than Pennichuck and that the burden of proof is on the petitioner.

Both companies have described the benefits of interconnecting satellites and the development of regional or subregional water systems. Southern has described their long term overall plan to acquire and interconnect satellite systems, but has not produced a specific plan or time table for these interconnections. Pennichuck has also described a general intent to form a regional system and has given specific consideration to local interconnection of some of the East Derry franchises. However, the details of the local interconnection have yet to be worked out and no timetable for connection to their core system or any other large system was described.

During hearings on these matters both companies discussed a historical confluence of their interests in Southern New Hampshire and each described at least one specific proposal to merge or buy-out the other. Details of why these initiatives were unsuccessful have not been provided.

Although not a party to the proceedings, the Town of Derry offered comments in a letter signed by Mayor Paul P. Collette Sr. Referring specifically to the proposed Derry franchises Mayor Collette advised the commission that the Town has hired a consultant to prepare a water system master plan for the entire town. He requested that no action be taken concerning franchising of the entire town until the master plan is complete and that community water system petitions be considered on a case by case basis.

IV. COMMISSION ANALYSIS

[1] Under New Hampshire statute RSA 374:22, no person or entity may provide water

service to the public or commence construction of plant to provide such service unless it has obtained Commission approval. The Commission must find that granting permission is in the public interest under RSA 374:26 and must further find under RSA 374:22 that requirements of the Water Supply and Pollution Control Commission and the Water Resources Board with regard to the suitability and availability of water are met.

Under New Hampshire statute RSA 374:2 no utility may charge rates which exceed just and reasonable rates approved by order of the Commission. Statutes RSA 378:27 and RSA 378:28 authorize the Commission to fix either temporary or permanent rates which shall be sufficient to yield not less than a reasonable return on the cost of the property which is used and useful in the public service, less accrued depreciation.

A. Analysis of the Public Good

Page 592

---

[2] In order to determine whether granting of permission to serve is in the public good the Commission must find that a need for service exists and that the applicant has the ability to provide the service. However, it is also the policy of this Commission that granting of new franchise areas be consistent with the orderly development of the region and that random "leap-frogging" of service areas be avoided. The Commission has also encouraged the major water utilities to negotiate to take over smaller water systems in the interest of improved service to the public and overall reduction of costs. All of these factors have been considered in this determination of public good.

In each of the proposed franchise areas a need has been demonstrated by the willingness of the developers to enter into a contract with the petitioner to provide water service.

Furthermore the Town of Derry has made no commitment to provide water service to the proposed franchise areas but has asked this Commission to consider each petition on its own merits. The Town of Plaistow where one of the service areas is located has no municipal water service and hence there is a need for an alternative water supplier to serve the area.

On the issue of the ability to provide service there was considerable testimony provided by the petitioner and by Southern New Hampshire Water Co. about the relative merits of the two companies. We find that no preponderance of evidence was given that either company lacks the ability to provide service. Both companies are providing generally acceptable service to customers in nearby areas of the state and we find that either is equally likely to provide adequate service to the proposed areas.

The Commission has placed importance on granting franchises which are consistent with the orderly development of this part of the State. A major investigation is underway to develop a comprehensive plan for meeting the immediate and future needs of southern New Hampshire for safe, economical and abundant water supplies.

This plan is being developed under the ce areas is located

direction of a task force of State Agencies, Regional Planning Commissions, water suppliers and private development interests.

It is expected that at the conclusion of this effort, the Commission will have a more complete and up to date basis for final determinations about the many factors which influence franchise decisions. Furthermore it is anticipated that this will form the basis for formation of regional or subregional water supply districts. The Commission will then be in a position to encourage coordination among the various parties who may serve the water needs of these districts and to move toward more integrated supply systems.

If the results of the study were available now, it could form a basis for judgements about the orderly development of water systems in East Derry and Plaistow and the level of service which might be provided by an integrated water supply system. However, in the absence of these results the Commission does not find that a sufficient basis exists in the record to decide the broad issue of integrated water systems in these areas. Furthermore, no specific commitments have yet been made by Pennichuck or Southern relative to construction of the larger systems.

[3, 4] It should also be understood that RSA 374:28 provides that "The Commission upon its own motion or upon petition of any interested party, may make an order withdrawing from a public utility its authority to engage in business in all or part of the territory in which it is authorized to operate whenever it shall find, after notice and public hearing that said utility has declined or unreasonably failed to render service in said territory or that its service in said territory is inadequate, no sufficient reason for such inadequacy appearing." If the Petitioner is authorized to engage in business in the proposed areas of East Derry and Plaistow and he fails to provide adequate service, the issue of integrated water systems could be revisited in the future. If no progress has been made on providing the benefits of an integrated system and another supplier stands ready

Page 593

at that time to provide such service, reassignment is possible. Furthermore, the possible integration of Pennichuck and Southern facilities in this part of the state may represent the best long range approach to orderly development. We encourage consideration of the merits of this approach by both companies and would welcome further input by them.

In consideration of these factors, the Commission finds that approval of the proposed franchise petitions is consistent with the current development of the area.

Finally, the Commission views the proposed purchase of developer systems by the Petitioner to be consistent with our long standing policy. We believe that access to the management, engineering and financial resources and the economies of scale in operations will provide long term benefits to the customers served by these systems and find it to be in the public good to encourage these initiatives.

In summary therefore we find that it will be for the public good for the Petitioner to be granted authority to purchase and operate the proposed systems in accordance with such further conditions as specified in this report and order.

B. Suitability and availability of water

The petitioner has provided documentation of approval by the Water Supply and Pollution Control Commission for Hi-Low Estates (docket DE 87-22) in exhibit 20, for Twin Ridge

(docket DE 87-23) in exhibit 19 and for DrewWoods/Bliss Farm (docket DE 87-27) in exhibit 5. However, the approval for Hi-Low Estates is limited to 50 units and the petitioner must provide evidence that requirements are met for any additional units, before they are connected to the system.

For the Cousins Farm development (docket DE 87-26) no documentation of approval was provided because the system has not yet been constructed. Therefore we will condition our approval of this franchise on submittal of the required documentation before any charges are made for water service.

Based on current policies of the Water Resources Board, no approval of a new water system is required until its water use exceeds 20,000 gallons per day. Therefore no further approval is needed at this time. However, at such future time as water use in any of these systems exceeds 20,000 gallons per day or if satellites are integrated into a connected system which uses more than 20,000 gallons per day, documentation shall be provided to the Commission which demonstrates that all requirements have been met.

C. Water Rates

[5] [ii] In docket DE 86-300, Pennichuck Water Works, Inc. was awarded a franchise area in Derry, New Hampshire and rates were established for the franchise in Order No. 18,685 (72 NH PUC 193). The approved rates were based on stand alone costs of the satellite system and a methodology developed through consultation with staff and approval by the Commission. Pennichuck has proposed that this same methodology be applied to the current four franchises. We concur with this proposal and will establish rates in accordance with that methodology. The methodology is outlined below. Calculations for each system are found in exhibit A of the order for each of the four dockets.

The rate base for each system is made up of three components: (i) Property, Plant and Equipment, (ii) inventory (repair fittings, spare parts) and (iii) working capital. Property, Plant and Equipment includes both the cost of the system as acquired from the developer and the cost of improvements by Pennichuck such as meter expenses. Inventory for each system includes an allocation of $500 out of the total Pennichuck inventory. Working capital is based on 45 days of operating and maintenance expense. This rate base is multiplied by the most recently approved rate of return for Pennichuck; which was 11.44%; to arrive at the

return on investment component of the revenue requirement.

Depreciation expense for the property, plant and equipment purchased from the developer is derived from the relative cost of each item. The cost paid by Pennichuck to the developer is allocated to each item in proportion to the costs incurred by the developer. Depreciation expenses for meters and other equipment paid for by Pennichuck are calculated directly from their original installed cost.

Other operating and maintenance expenses and taxes are based on estimates of the costs to be incurred by Pennichuck. Since these systems are not yet in full operation and in one case have not yet been installed, historical data is lacking. Operating and maintenance expenses have been

estimated from Commission staff and Pennichuck experience with their existing Derry franchise and administrative expenses for their company in total. Taxes are derived from the local property tax rate and the current federal corporate tax rate.

The revenue requirement is the sum of these costs i.e. return on investment, depreciation, operating and maintenance expense and taxes. Rates are determined as follows. A customer charge is calculated by dividing the sum of depreciation and property tax expense by the total number of customers to be served. This quotient is then divided by 12 to determine a monthly customer charge. A consumption charge is then calculated to provide the balance of the revenue requirement. This charge is equal to the remaining balance divided by the estimated annual water use assuming 8000 cubic feet per customer per year. The resulting rates are given in the following summary table.

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

Docket	Monthly Customer Charge	Consumption Charge per 100 cu. ft.
DE 87-22	$3.05	$2.88
DE 87-23	$4.04	$2.69
DE 87-26	$4.80	$4.19
DE 87-27	$2.00	$2.10

These rates are reflected in proposed tariff pages filed with the various petitions. However, we find that rates as calculated above should not be considered permanent tariffed rates because of the lack of historical data upon which to base them.

Rather they should be employed only until one year of historical data is available. We find that there is sufficient information to allow them to be placed in effect as interim rates and further that they shall not be subject either to recoupment of revenue or refund of over collection if the permanent rates are set at a different level.

New tariff pages should be filed by the company reflecting the fact that these are interim rates.

Our order will issue accordingly.

DE 87-22

ORDER NO. 18,952

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

ORDERED, that Pennichuck Water Works Inc. be and hereby is, authorized to conduct operations as a water public utility in the limited area of the Town of Derry identified as Hi-Low Estates and adjacent land of WZ Builders as described in the foregoing report; and it is

FURTHER ORDERED, that Pennichuck Water Works Inc. file revised tariff pages reflecting the interim rates as detailed in the report and revenue requirements developed in attached exhibit A; and it is

FURTHER ORDERED, that Pennichuck Water Works Inc. file a complete

description of this service area by metes and bounds or as an overlay on a copy of the tax maps of the Town of Derry or a similarly detailed map; and it is

FURTHER ORDERED, that Pennichuck Water Works Inc. file a petition for permanent rates within 15 months after they begin operations in this service area, which petition shall reflect at least 12 months of operating data; and it is

FURTHER ORDERED, that Pennichuck provide timely information to staff of this Commission on the adequacy of service to customers in this service area including the periodic reporting required under PUC Rule 607, an annual update on progress toward integration of satellite systems with a core system and the results of 48 hour pumping tests on each well serving the service area on a frequency of once every five years.

By order of the Public Utilities Commission of New Hampshire this thirty-first day of December, 1987.

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

DE 87-22

Exhibit A — Determination of Revenue Requirement

I Rate Base
Cost of acquisition of supply and distribution system $20,000
Pennichuck inspection labor and estimated legal fees 2,500
Metering equipment 6,400
Inventory 500
Working capital 1,280
Rate Base $30,680

II Revenue Requirement
Cost of Capital x .1144
Return on Rate Base $ 3,510
O & M Expense (see III) 10,233
Taxes (see IV) 2,392
Depreciation expense (see V) 962
Revenue Requirement $17,097

III O & M Expense
Production Costs
Monitoring $ 4,472
Power 2,624
Maintenance — equipment 500
Sub-Total $ 7,596
Customer related costs
Meter reading $ 344
Billing and Accounting 325
Sub-Total $ 669
Administration and General
Management and general administration $ 1,768
Insurance 200
Sub-Total $ 1,968
Total O & M Expense $10,233

IV Taxes
Property tax $ 1,3830
Income tax 1,0090
Total tax $ 2,3920

V Depreciation
Item Allocated Cost Depreciation Rate Depreciation

Wells	$ 540.00	2.0%	10.80
Pumps	1,957.50	10.0%	195.75
Structures	3,330.00	2.5%	83.25
Tanks	3,127.50	2.0%	62.55
Mains	9,832.50	2.0%	196.65
Services	3,712.50	2.5%	92.81
Total[1]	$22,500.00		641.81
Meters	6,400.00	5.0%	320.00
Total[2]	28,900.00		961.81

---

[1]Cost of purchased system including Pennichuck's inspection and legal expenses.

[2]Cost of entire system including construction expenses of Pennichuck for metering.

DE 87-26

ORDER NO. 18,953

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

ORDERED, that Pennichuck Water Works Inc. be and hereby is, authorized to conduct operations as a water public utility in the limited area of the Town of Plaistow identified as land of Twin Ridge Associates as described in the foregoing report; and it is

FURTHER ORDERED, that Pennichuck Water Works Inc. file revised tariff pages reflecting the interim rates as detailed in the report and revenue requirements developed in attached exhibit A; and it is

FURTHER ORDERED, that Pennichuck Water Works Inc. file a complete description of this service area by metes and bounds or as an overlay on a copy of the tax maps of the Town of Plaistow or a similarly detailed map; and it is

FURTHER ORDERED, that Pennichuck Water Works Inc. file a petition for permanent rates within 15 months after they begin operations in this service area, which petition shall reflect at least 12 months of operating data; and it is

FURTHER ORDERED, that Pennichuck provide timely information to staff of this Commission on the adequacy of service to customers in this service area including the periodic reporting required under PUC Rule 607, an annual update on progress toward integration of satellite systems with a core system and the results of 48 hour pumping tests on each well serving the service area on a frequency of once every five years.

By order of the Public Utilities Commission of New Hampshire this thirty-first day of December, 1987.

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

DE 87-23

Exhibit A — Determination of Revenue Requirement


```
I Rate Base
    Cost of acquisition of supply and
      distribution system $20,0000
    Pennichuck inspection labor and
      estimated legal fees 20,6370
    Metering equipment 8,8000
    Inventory 5000
    Working capital 1,4170
  Rate Base      $51,3540

II Revenue Requirement
    Cost of Capital x  .1144
    Return on Rate Base $  5,8750
    O & M Expense (see III) 11,3380
    Taxes (see IV) 4,2060
    Depreciation expense (see V) 1,7530
  Revenue Requirement      $23,1720

III O & M Expense
    Production Costs
      Monitoring $  4,4720
      Power 3,6080
      Maintenance — equipment 5000
  Sub-Total      $  8,5800
    Customer related costs
      Meter reading $  3440
      Billing and Accounting 4460
  Sub-Total      $  7900
    Administration and General
      Management and general administration $  1,7680
      Insurance 2000
  Sub-Total      $  1,9680
  Total O & M Expense      $11,3380

IV Taxes
    Property tax $  2,5160
    Income tax 1,6900
  Total tax      $  4,2060

V Depreciation
  Item Allocated Cost  Depreciation Rate  Depreciation

  Wells $  5,283.00    2.0%  105.66
  Pumps   5,283.00  10.0%  528.30
  Structures   7,315.00    2.5%  182.88
  Tanks   5,689.00    2.0%  113.78
  Mains   8,940.00    2.0%  178.80
  Services   8,127.00    2.5%  203.18
    Total[1] $40,637.00    $1,312.60
   Meters   8,800.00    5.0%  440.00
     Total[2]   49,437.00    $1,752.60
```

---

[1]Cost of purchased system including Pennichuck's inspection and legal expenses.

[2]Cost of entire system including construction expenses of Pennichuck for metering.

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

ORDERED, that Pennichuck Water Works Inc. be and hereby is, authorized to conduct operations as a water public utility in the limited area of the Town of Derry identified as Cousins Farm as described in the foregoing report; and it is

FURTHER ORDERED, that Pennichuck Water Works Inc. file revised tariff pages reflecting the interim rates as detailed in the report and revenue requirements developed in attached exhibit A; and it is

FURTHER ORDERED, that Pennichuck Water Works Inc. file a complete description of this service area by metes and bounds or as an overlay on a copy of the tax maps of the Town of Derry or a similarly detailed map; and it is

FURTHER ORDERED, that Pennichuck Water Works Inc. file a petition for permanent rates within 15 months after they begin operations in this service area, which petition shall reflect at least 12 months of operating data; and it is

FURTHER ORDERED, that Pennichuck provide timely information to staff of this Commission on the adequacy of service to customers in this service area including the periodic reporting required under PUC Rule 607, an annual update on progress toward integration of satellite systems with a core system and the results of 48 hour pumping tests on each well serving the service area on a frequency of once every five years.

By order of the Public Utilities Commission of New Hampshire this thirty-first day of December, 1987.

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

DE 87-26

Exhibit A — Determination of Revenue Requirement

I	Rate Base	
	Cost of acquisition of supply and distribution system	$12,600
	Pennichuck inspection labor and estimated legal fees	1,500
	Metering equipment	3,500
	Inventory	500
	Working capital	1,112
	Rate Base	$19,212
II	Revenue Requirement	
	Cost of Capital x	.1144
	Return on Rate Base	$ 2,198
	O & M Expense (see III)	8,896
	Taxes (see IV)	2,015
	Depreciation expense (see V)	635
	Revenue Requirement	$13,744
III	O & M Expense	
	Production Costs	
	Monitoring	$ 4,472
	Power	1,435
	Maintenance — equipment	500
	Sub-Total	$ 6,407
	Customer related costs	
	Meter reading	$ 344
	Billing and Accounting	177
	Sub-Total	$ 521

```
    Administration and General
      Management and general administration $  1,768
      Insurance 200
  Sub-Total      $  1,968
  Total O & M Expense      $8,896

IV Taxes
    Property tax $  1,383
    Income tax 632
  Total tax      $  2,015

V Depreciation
  Item Allocated Cost  Depreciation Rate  Depreciation

  Wells $  987.00    2.0%  19.74
  Pumps   1,974.00  10.0%  197.40
  Structures   1,551.00    2.5%  38.78
  Tanks   2,679.00    2.0%  53.58
  Mains   4,512.00    2.0%  90.24
  Services   2,397.00    2.5%  59.93
    Total[1] $14,100.00    459.67
   Meters   3,500.00    5.0%  175.00
     Total[2]   17,600.00    634.67
```

---

[1]Cost of purchased system including Pennichuck's inspection and legal expenses.

[2]Cost of entire system including construction expenses of Pennichuck for metering.

DE 87-27

ORDER NO. 18,955

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

ORDERED, that Pennichuck Water Works Inc. be and hereby is, authorized to conduct operations as a water public utility in the limited area of the Town of Derry identified as Drew Woods and an area identified as Poole Farm or Bliss Farm as described in the foregoing report; and it is

FURTHER ORDERED, that Pennichuck Water Works Inc. file revised tariff pages reflecting the interim rates as detailed in the report and revenue requirements developed in attached exhibit A; and it is

FURTHER ORDERED, that Pennichuck Water Works Inc. file a complete description of this service area by metes and bounds or as an overlay on a copy of the tax maps of the Town of Derry or a similarly detailed map; and it is

FURTHER ORDERED, that Pennichuck Water Works Inc. file a petition for permanent rates within 15 months after they begin operations in this service area, which petition shall reflect at least 12 months of operating data; and it is

FURTHER ORDERED, that Pennichuck provide timely information to staff of this Commission on the adequacy of service to customers in this service area including the periodic reporting required under PUC Rule 607, an annual update on progress toward integration of

satellite systems with a core system and the results of 48 hour pumping tests on each well serving the service area on a frequency of once every five years.

By order of the Public Utilities Commission of New Hampshire this thirty-first day of December, 1987.

Page 600

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

DE 87-27

Exhibit A — Determination of Revenue Requirement

I Rate Base
- Cost of acquisition of supply and distribution system $82,369
- Pennichuck inspection labor and estimated legal fees 2,500
- Metering equipment 18,800
- Inventory 500
- Working capital 1,993

Rate Base $106,162

II Revenue Requirement
- Cost of Capital x.1144
- Return on Rate Base $12,145
- O & M Expense (see III) 15,945
- Taxes (see IV) 4,875
- Depreciation expense (see V) 3,121

Revenue Requirement $36,086

III O & M Expense
- Production Costs
  - Monitoring $ 4,472
  - Power 7,708
  - Maintenance — equipment 500

Sub-Total $12,680
- Customer related costs
  - Meter reading $ 344
  - Billing and Accounting 953

Sub-Total $ 1,297
- Administration and General
  - Management and general administration $ 1,768
  - Insurance 200

Sub-Total $ 1,968

Total O & M Expense $15,945

IV Taxes
- Property tax $ 1,383
- Income tax 3,492

Total tax $ 4,875

V Depreciation

Item	Allocated Cost	Depreciation Rate	Depreciation
Wells	$ 4,244.00	2.0%	84.88
Pumps	5,092.00	10.0%	509.2
Structures	2,546.00	2.5%	63.65
Tanks	16,125.00	2.0%	322.50
Mains	44,132.00	2.0%	882.64
Services	12,730.00	2.5%	318.25
Total[1]	$84,869.00		$2,181.12
Meters	18,800.00	5.0%	940.00
Total[2]	93,669.00		$3,121.12

---

[1]Cost of purchased system including Pennichuck's inspection and legal expenses.

[2]Cost of entire system including construction expenses of Pennichuck for metering.

==========

Endnotes

1 (Popup)

[1]This Deferred Cost Recovery Account balance increases when the cost differential between coal and oil burned at Schiller changes such that oil has a price benefit over coal. This diminishes the energy cost savings contemplated when converting the Schiller units from oil to coal. The cost recovery foregone due to the diminished savings are deferred until such a time that the savings begin to materialize or the Schiller agreement is terminated.

2 (Popup)

[1]Commissioner Aeschliman found that completion of Seabrook I and the development of the Commission's estimate of SPP's, together with the loss of the UNITIL load, was only possible within a reasonable range of retail rates if PSNH was required to absorb significant costs. In addition, Commissioner Aeschliman found that a reasonable range of retail rates under these assumptions depended upon Seabrook completion within the debt levels approved. DF 84-200, Re Public Service Co. of New Hampshire, Report and Ninth Supplemental Order No. 17,558 (April 18, 1985) (70 NH PUC 164, 66 PUR4th 349), Separate Opinion of Commissioner Aeschliman at 2, 3, 69-72; and Fifteenth Supplemental Order No. 17,939, Separate Opinion of Commissioner Aeschliman (70 NH PUC 886).

3 (Popup)

[1]DE 84-92, Order No: 17,065 (June 5, 1984) at 10 (69 NH PUC 301). Note that there is a typographical error in the Order itself. Whereas the charge of $570.00 should be $540.00 as in the Report.

4 (Popup)

[1]Petition at 2.

5 (Popup)

[2]Docket No. DSF 6205, (January 29, 1974) as modified by Order No. 12,215 (April 20, 1976) (61 NH PUC 96) and by Order No. 13,941 (December 13, 1979) (64 NH PUC 417).

6 (Popup)

[3]DSF 6205, Order No. 11,267 (January 29, 1974), 59 NH PUC 127 at 132, 133.

7 (Popup)

[4]RSA 371:4.

8 (Popup)

[5]See footnotes 2 and 3 supra.

9 (Popup)

[6]Order No. 11,267 (January 29, 1974) in Docket DSF 6205, 59 NH PUC at 132, 133.

10 (Popup)

[7]Aff'd, Re Society for Protection of Environment of Southeast New Hampshire, 122 N.H. 703 (1982).

11 (Popup)

[8]Tr. 57.

12 (Popup)

[9]Re Hampton Water Works Co., 67 NH PUC 680, 681, 682, (1982).

13 (Popup)

[1]In their filing, the customers proposed superintendence fees based on $15.00 per hour. At the hearing Mr. Crowley agreed that $20.00 was a more reasonable figure (Transcript, page (129). Utilizing $20.00 per hour instead of $15.00 results in a superintendence estimate of $4,520.

14 (Popup)

[1]The Policy Water System was not included in the Company's filing for this docket.

15 (Popup)

[2]The effect of the Tax Reform Act of 1986 is reflected in the stipulation to the extent possible. The Federal tax rate used was 40% and some adjustment was made to reflect a reduction in excess deferred taxes.

16 (Popup)

[1]The Greenville project is a wood-fired small power production facility being developed by Swift River/ Haflsund Company, which is a general partner of the Stewartstown Steam Company, a limited partnership established for the purposes of developing and operating the Stewartstown facility.

17 (Popup)

[2]Docket No. DR 86-39, Re SES Concord Co., L.P., Report and Order No. 18,358, pp. 10-12 (71 NH PUC 437).

18 (Popup)

[3]Report accompanying Order No. 18,343, dated July 23, 1986, at 10-11 (71 NH PUC 423).

19 (Popup)

[4]Id. at 5 et. seq.

20 (Popup)

[1]If the Commission approves rate filings that exceed the utility's avoided costs, then rates would be raised not lowered.

21 (Popup)

[2]The SPP capacity that would have been available absent the buyout could be added to the generating resources of the Company for purposes of calculating excess capacity.

22 (Popup)

[1]The CRR was not a party to the proceeding which lead to Order No. 18,530 (72 NH PUC 8). See e.g., CRR Motion for Rehearing at §2. This does not bar CRR from filing a Motion for Rehearing because the statute provides that such motions may be filed by "... any party to the action or proceeding before the commission or any person directly affected thereby ..." RSA 541:3. For the purposes of the instant order, we have considered and ruled on the claims of the CRR.

Given the nature of those claims, we do not believe that our decision to address the CRR Motion can be construed as a finding that CRR's substantial interests will be affected to an extent that warrants intervention in the proceedings on rehearing. See e.g., RSA 541-A:17 (Supp. 1986). If CRR wishes to participate in the proceedings on rehearing, it must file a Motion to Intervene pursuant to RSA 541-A:17 (Supp. 1986) and N.H. Admin. Rules, Puc 203.02 (or Puc 203.03).

23 (Popup)

[2]The record support for these findings will be discussed infra.

24 (Popup)

[1]RSA 374:22 provides as follows:

No person or business entity shall commence business as a public utility with 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 without first having obtained the permission and approval of the commission.

25 (Popup)

[1]All citations herein are to the New Hampshire Revised Statutes Annotated unless otherwise indicated.

26 (Popup)

[1]All citations herein are to the New Hampshire Revised Statutes Annotated unless otherwise indicated.

27 (Popup)

[*]As corrected by Third Supplemental Order No. 18,612, March 24, 1987.

28 (Popup)

[1]All citations herein are to the New Hampshire Revised Statutes Annotated unless otherwise noted.

29 (Popup)

[2]Pinetree alleges harm because the prefiled testimony "may" have been read or considered by the Commission or its advisory Staff. Pinetree Motion for Rehearing, pp. 15, 36.

30 (Popup)

[3]More specifically, in its first argument the Pinetree Motion states that the Commission violated its announced rules, orders, regulations and policies by denying Pinetree a rate in its Report and Order. In its second argument, Pinetree argues that the Commission unlawfully and unreasonably imposed new prefiling requirements on Pinetree in its Report and Order. In its third argument Pinetree asserts that the Commission developed policies in dockets outside DE 83-62 and DE 85-215, which were unlawful due to lack of proper notice. Pinetree's fourth argument asserts that the Report and Order is unlawful and unreasonable because it applied more stringent standards without proper notice of the consideration of such standards. Pinetree's fifth argument asserts that the Commission's Orders, in DE 83-62 and DR 85-215 constitute rules under the State's administrative procedures act, Chapter 541-A:1 N.H. Rev. Stat. Ann. and that the Report and Order constitutes an amendment or change to those rules without following the procedures of the act.

31 (Popup)

[4]The Commission subsequently rescheduled the hearings by a letter of June 30, 1986 from Commission Secretary to all parties.

32 (Popup)

[1]This proceeding has been divided into three phases as detailed in transcript pages 29-36 and the letter from Commission Counsel Rothfelder to Commission Secretary Arnold dated January 19, 1987.

33 (Popup)

[2]Exhibits specifically withdrawn are exhibits 51 and 71. They remain as exhibits but shall not be admitted into evidence for any purpose.

34 (Popup)

[3]Exhibit 8, 9, 15, 16, 20 and 27 remain marked as exhibits, but shall not be admitted into evidence at this time due to lack of supporting witnesses. The Commission anticipates that witnesses supporting these exhibits will testify in later phases of this proceeding. Similarly, the testimony of Ralph S. Johnson, Roger F. Naill, Daniel R. Cleverdon, Richard V. Perron, Michael T. Smith, and Gordon W. Tuttle in exhibit 36; the testimony of Roger F. Naill in exhibit 37; and the testimony of Daniel R. Cleverdon in exhibit 38 shall not be admitted in evidence at this time.

35 (Popup)

[1]See DE 83-297, Exeter and Hampton Electric Company — Electric Service Protection (ESP) Program, DE 84-243 ESP, DE 85-332 ESP, DR 86-210 ESP; DE 86-228, Concord Electric Company — ESP Program; DR 82-333 Part B Targeted Lifeline; DR 84-205 Targeted Termination; and, DRM 85-309 Targeted Termination — Public Service Company of New Hampshire.

36 (Popup)

*As amended by Seventh Supplemental Order No. 18,633, April 9, 1987.

37 (Popup)

[1]All citations herein are to the New Hampshire Revised Statutes Annotated unless otherwise noted.

38 (Popup)

[2]Under Gas Service, Inc. tariffs, rate class D is for domestic use which is separately metered and billed for each dwelling unit. It is also for domestic use when the total rated hourly input of appliances connected to the separately billed meter does not exceed five (5) therms per hour. Availability, is limited to use in locations reached by the Company's mains and for which its facilities are adequate.

39 (Popup)

[1]The commission has been advised that on March 27, 1987, the Commission General Counsel received a communication from Granite State agreeing to defer billing the increase as long as Granite State could collect, with interest, any increase that might result from the FERC case. The proposal apparently tracks a similar proposal successfully pursued by the Rhode Island Attorney General and is based upon the likelihood of the FERC NEP case resulting in a decrease from current rates. Because of the lateness of this proposal, its informality, its lack of detail, and its nonconformance with established tariffs, the Commission reluctantly concludes that it may not pursue that option at this time.

40 (Popup)

[1]Company Counsel misinterpreted the meaning of financial feasibility in the questions I raised to mean financial feasibility in relation to PSNH's Seabrook investment. The statement specifically referred to the financial viability of the Company. In this context it should have been clear that financial feasibility referred to the ability of the Company to support its capitalization.

41 (Popup)

[2]Remarks by R. J. Harrison, News Conference July 18, 1986, DR 86-41, Exhibit 58, 5-6.

42 (Popup)

[3]Testimony of Charles Bayless, DR 86-122, 12 Tr. 27.

43 (Popup)

[4]Testimony of Charles Bayless, DR 86-122, 12 Tr. 26, 37-40. Securities and Exchange Commission Form S-1, Registration No. 2-921202, December 9, 1986, 18.

44 (Popup)

[5]Securities and Exchange Commission Form S-1, Registration No. 2-921202, December 9, 1986, 60.

45 (Popup)

[6]Securities and Exchange Commission Form S-1, Registration No. 2-92102, December 9,

1986, 13.

46 (Popup)
[7]Id.

47 (Popup)
[8]Id., 5.

48 (Popup)
[9]Testimony of Wyatt Brown, DR 86-41, 5 Tr 26-27.

49 (Popup)
[10]Id. 9 Tr 31.

50 (Popup)
[11]Id. 6 Tr 106-107; 9 Tr 31.

51 (Popup)
[12]Id. 9 Tr 46-47.

52 (Popup)
[13]Testimony of Roger Naill, DR 86-41, Exh. 37, 37-38.

53 (Popup)
[14]Testimony of Wyatt Brown, DR 86-41, 9 Tr 136.

54 (Popup)
[15]Testimony of Bruce Ambrose, DR 86-41, 10 Tr 73-74.

55 (Popup)
[16]Testimony of Charles Bayless, DR 86-122, Tr 117-120.

56 (Popup)
[1]MWW Post-Hearing Memorandum dated January 26, 1987 at 17, citing RSA 378:30-a.

57 (Popup)
[2]MWW Post-Hearing Memorandum dated January 26, 1987 at 22 citing RSA 378:10.

58 (Popup)
[3]RSA 378:11

59 (Popup)
[4]Letter dated November 19, 1986 from Bernard D. Lucey, Chief, Water Supply Division, WSPCC to Public Utilities Commission (Exhibit 17).

60 (Popup)
[*]Re Northeast Hydrodevelopment Corp., Docket No. DR 85-187, Report and Order No. 17,754, 70 NH PUC 646 (1984), and Docket Nos. DR 85-185, DR 85-187, Supplemental Order

No. 17,916, 70 NH PUC 865 (1985) (Pine Island), Re Northeast Hydrodevelopment Corp., Docket No. DR 85-185, Order No. 17,753, 70 NH PUC 645 (1985) and Docket Nos. DR 85-185, DR 85-187, Supplemental Order No. 17,916, 70 NH PUC 865 (1985) (Buck Street) and Re Wiswall Hydroelectric Associates, Docket No. DR 86-137, Order No. 18,267, 71 NH PUC 312 (1986) (Wiswall Dam).

61 (Popup)

[1]Under the DE 83-62 methodology developers are protected by the "buy-out" provision in a period of increasing avoided costs.

62 (Popup)

[*]Re Northeast Hydrodevelopment Corp., Docket No. DR 85-187, Report and Order No. 17,754, 70 NH PUC 646 (1984), and Docket Nos. DR 85-185, DR 85-187, Supplemental Order No. 17,916, 70 NH PUC 865 (1985) (Pine Island), Re Northeast Hydrodevelopment Corp., Docket No. DR 85-185, Order No. 17,753, 70 NH PUC 645 (1985) and Docket Nos. DR 85-185, DR 85-187, Supplemental Order No. 17,916, 70 NH PUC 865 (1985) (Buck Street), and Re Wiswall Hydroelectric Associates, Docket No. 86-137, Order No. 18,267, 71 NH PUC 312 (1986) (Wiswall Dam).

63 (Popup)

[1]Under the DE 83-62 methodology developers are protected by the "buy-out" provision in a period of increasing avoided costs.

64 (Popup)

[1]Post hearing memorandum of Thomas B. Getz citing Exeter & Hampton Electric Co. v. Harding, 105 N.H. 317, 319 (March 31, 1964).

65 (Popup)

[2]New Hampshire Electric Cooperative, Inc. brief dated April 16, 1987, page 3.

66 (Popup)

[3]New Hampshire Electric Cooperative, Inc. brief dated April 16, 1987, page 5.

67 (Popup)

[1]The Commission may impose reasonable conditions upon authorizations of financings. See Re Public Service Co. of New Hampshire, 122 N.H. 1062, 1072, 51 PUR4th 298, 454 A.2d 435 (1982).

68 (Popup)

[2]The CRR Motion also argues that the PSNH authority was based upon a specific transaction. Thus, the above discussion also addresses that CRR argument.

69 (Popup)

[1]For purposes of this discussion an island is an area already franchised which is generally surrounded by the proposed franchise territory.

70 (Popup)

[2]The Commission notes that Exhibits 2 and 10 in this docket accurately depict the areas requested and contested to the extent each shows them.

71 (Popup)

[3]On April 6, 1987, the Commission approved a source development charge for MWW. Docket No. DR 86-80, Order No. 18,628 (72 NH PUC 138).

72 (Popup)

[4]The Commission notes that since the hearing Spring Hills Water Co. has petitioned to serve the Home Plate development as a water utility. Docket No. DE 87-10.

73 (Popup)

[1]The New Hampshire Electric Cooperative cases cited in brief by the Company do not apply. The 70:30 proforma capital structure was proposed by the NHEC witness but not adopted by the Commission. The Commission's findings were based on TIER coverage rather than hypothetical capital structure.

74 (Popup)

[2]Priest, Principles of Public Utility Regulation at 206.

75 (Popup)

[1]The Commission notes that the DIRC policy specified in the settlement agreement in DR 82-333 provided that the policy applies if, among other things:

the contract customer demonstrates and the Company agrees that the kilowatt-hours of energy and kilowatts of demand to which contract rates will apply will serve new or expanded New Hampshire loads which would otherwise not exist without special contract rates.

Our order in DR 82-333 approving this policy may not have been as explicit. That Order talks only of new or existing loads without addressing the requirement of showing that the load would not exist without the rate. Thus, for this case, we approve the contract based upon the showing that JARL is a new load attracted by the potential contract. In future cases, the Commission shall expect stronger evidence showing that the load would not exist without Commission approval of the contract rate.

76 (Popup)

[1]The Commission notes that the DIRC policy specified in the settlement agreement in DR 82-333 provided that the policy applies if, among other things:

the contract customer demonstrates and the Company agrees that the kilowatt-hours of energy and kilowatts of demand to which contract rates will apply will serve new or expanded New Hampshire loads which would otherwise not exist without special contract rates.

Our order in DR 82-333 approving this policy may not have been as explicit. That Order talks only of new or existing loads without addressing the requirement of showing that the load

would not exist without the rate. Thus, for this case, we approve the contract based upon the showing that JARL is a new load attracted by the potential contract. In future cases, the Commission shall expect stronger evidence showing that the load would not exist without Commission approval of the contract rate.

77 (Popup)

[1]Mr. Winter cited during oral testimony the following two papers which show how managements of regulated companies through the manipulation of capital structures can earn higher rates. Neither paper was made part of the public record.

a) Robert A. Taggart, Jr., "Rate of Return Regulation and Utility Capital Structure Decisions", Journal of Finance, May 1981, pp. 383-399.

b) _____, "Effects of Regulation on Utility Financing: Theory and Evidence", The Journal of Industrial Economics, March 1985, pp. 257-276.

78 (Popup)

[1]Construction work in progress (CWIP) as used herein means all plant which is either under construction or upon which construction has ceased, and that is not yet providing service to customers. Re Public Service Co. of New Hampshire, 125, N.H. 46, 60 PUR4th 16, 480 A.2d 20 (1984).

79 (Popup)

[2]Rate base is the depreciated investment in plant plus working capital that the Commission authorizes the Company to earn a return on. Re Public Service Co. of New Hampshire, 125 N.H. 46, 4a, 60 PUR4TH 16, 480 A.2d 20 (1984).

80 (Popup)

[1]The sentence to be stricken reads as follows: "Staff, using the accounting based embedded methodology as adopted by the Commission in DR 77-49, Re Public Service Co. of New Hampshire, obtains results of 13.28% on preferred stock and 15.28% on long term debt."

81 (Popup)

[2]The PSNH Motion for Rehearing refers the Commission to rates of return "much higher" being earned by "non-speculative" utilities. The Commission agrees that the schedules PSNH cites show some utilities earning a return on equity above 15%. The existence of such returns does not support the position that a Commission would or should provide a return to those companies at that level if the commission were considering rates for them today.

82 (Popup)

[3]The Commission notes that no party introduced evidence in this docket with regard to economic or efficient management of PSNH. This situation may have resulted, from the parties anticipation of exhaustive review of PSNH's prudence in future Commission proceedings regarding the rate impacts of the Seabrook I plant.

83 (Popup)

[4]In its June 29, 1987 Report and Order, the Commission continued normalization treatment to tax timing differences associated with post-1970 plant.

84 (Popup)

[1]Fourteenth Supplemental Order No. 18,726 (72 NH PUC 237) (June 29, 1987).

85 (Popup)

[2]Sixteenth Supplemental Order No. 18,774 (72 NH PUC 328) (July 28, 1987) and Seventeenth Supplemental Order No. 18,775 (72 NH PUC 330) (July 30 1987).

86 (Popup)

[1]The eight SPPs affected by the suspension in Order 18,223 are: Pinetree Power-Tamworth (DR 86-28); Franconia Power & Light (DR 86-35); Thermo Electron-Troy (DR 86-52); Thermo Electron-Conway (DR 86-53); Thermo Electron-Antrim (DR 86-54); Thermo Electron-Campton (DR 8655); Thermo Electron-Fitzwilliam (DR 86-56); Stewartstown Steam Co. (DR 86-98). Other SPPs affected by Order 18,223 that had not yet received long term rate orders are Pinetree PowerNorth, Inc. (DR 86-100); Pinetree Power-Berlin, Inc. (DR 86-101); Pinetree Power-Campton, Inc. (DR 86-102); Pinetree Power-Winchester, Inc. (DR 86-103); Pinetree Power Energy Corporation (DR 86-104); Pinetree Power-Hinsdale, Inc. (DR 86105); Pinetree Power-Lancaster, Inc. (DR 86-109); Pittsfield Power & Light (DR 86-125); Belmont Mill Power Associates (DR 86-128); Northeast Cogeneration Systems (DR 86-135). The suspended long term rates for Pinetree/Tamworth were previously approved NISI by Commission Order No. 18,112 dated February 11, 1986 (71 NH PUC 123), effective March 3, 1986.

87 (Popup)

[2]Report accompanying Order No. 18,293 (71 NH PUC at p. 350).

88 (Popup)

[3]PSNH motion for rehearing filed on June 25, 1986 at p 2.

89 (Popup)

[4]Id. at 2-3.

90 (Popup)

[5]Order No. 18,293 was dated June 4, 1986.

91 (Popup)

[6]PSNH motion for rehearing filed on June 25, 1986 at p 2.

92 (Popup)

[7]71 NH PUC at p. 349.

93 (Popup)

[1]NET Memorandum of Law dated and filed May 22, 1987.

94 (Popup)

[2]Citizens for Fair Zoning Memorandum and Argument dated May 22, 1987, p. 4.

95 (Popup)

[3]Id. at 3 and 4.

96 (Popup)
[4]Ibid at pp. 6 and 7.

97 (Popup)
[5]Re Hampton Water Works Co., 67 NH PUC 597 (1982).

98 (Popup)
[6]Id.

99 (Popup)
[7]Re Hampton Water Works Co., 67 NH PUC 597 (1982).

100 (Popup)
[*]Commissioner Linda G. Bisson did not participate in this decision.

101 (Popup)
[*]Commissioner Linda G. Bisson did not participate in this decision.

102 (Popup)
[*]Commissioner Linda G. Bisson did not participate in this decision.

103 (Popup)
[1]The order of notice did not require publication until August 24, 1987 so publication was timely. The 17 day time frame required by N.H. Admin. Rules 203.01 was waived pursuant to Rule Puc 203.01. The allegation of emergency justified this waiver.

104 (Popup)
[*]Commissioner Linda G. Bisson did not participate.

105 (Popup)
[1]Mathematically lambda is the marginal cost associated with minimizing costs while providing adequate generation to supply load.

106 (Popup)
[2]In reflection of the varying size of the respective utilities, the parties to the settlement agreement agreed on the following decrement amounts: NEP/Granite State-100 MW, PSNH-50 MW, CVEC/Conn Valley-20 MW, NHEC-(See PSNH), and the UNITIL Companies-10 MW. Exhibit #1, page 10.

107 (Popup)
[3]The Commission is cognizant of the reservation expressed by Granite State witness John Levett, as to whether the 1% adjustment recommended in the settlement agreement was intended to include avoidable operating and maintenance costs. Tr. IV-21.

108 (Popup)
[4]The QF will continue to pay the full costs of the interconnection study.

109 (Popup)

[5]Blue Chip Economic Indicator, October 10, 1985.

110 (Popup)

[6]The Hydro Quebec savings fund was established for the purpose of allocating and distributing to member utilities all savings which are realized by NEPOOL as a result of NEPOOL Energy Transactions made available by the project.

111 (Popup)

[7]During the hearings Granite State informed all parties that it had inadvertently not used its most recent load forecast. However, the evidence indicates that this change would not materially affect its long term avoided cost estimates.

112 (Popup)

[*]Commissioner Bisson did not participate.

113 (Popup)

[**]Commissioner Bisson did not participate.

114 (Popup)

[1]Re Concord Electric Co., 69 NH PUC 242 (1984); Docket DF 84-100, Order No. 17,030, May 16, 1984.

115 (Popup)

[1]Re Exeter and Hampton Electric Co., 62 NH PUC 332, Docket DF 77-154, Order No. 12,987, (N.H.P.U.C. Dec. 8, 1977).

116 (Popup)

[*]Commissioner Linda G. Bisson did not participate in this decision.

117 (Popup)

[*]Commissioner Bisson did not participate.

118 (Popup)

[1]This approximate calculation is developed by taking the 52.08% in the testimony and multiplying it by (1.00-.34). The .34 is the federal tax rate.

119 (Popup)

[2]The commission also notes that PSNH has not made a filing for a permanent rate increase. Uncontradicted testimony of staff witness Voll indicates that pursuit of rate relief based upon traditional criteria would not result in a "meaningful increase" in rates. The commission finds that testimony and Dr. Voll's analysis reasonable. Thus, PSNH has asked for emergency rates that it clearly would not receive under traditional ratemaking.

120 (Popup)

[3]PSNH, the consumer advocate and the staff all indicate through testimony or pleadings a position that agrees with this finding.

121 (Popup)

[4]N.H. Admin. Rules, Puc 307.04.

122 (Popup)

[5]The commission makes no finding here regarding the appropriate method to allocate plant for purposes of rate base once one plant of a two plant project is cancelled and the other is operating.

123 (Popup)

[6]Adjusting the historical investment to investment that would have existed at the 35.56942% level requires the investment to be multiplied by 35.56942./50.0

124 (Popup)

[1]Re Public Service Co. of New Hampshire, 70 NH PUC 164, 247-262, 66 PUR4th 349 (1985).

125 (Popup)

[2]Re Conservation Law Foundation of New England, Inc., 127 N.H. 606, 625, 507 A.2d 652 (1986).

126 (Popup)

[1]This result is also consistent with RSA 21:35.

127 (Popup)

[2]The commission assumes, for purposes of disposition of this motion, that the copy of the CUC motion for intervention served on PSNH lacked a signature but was otherwise a copy of the petition. Thus, in addition to being untimely, CUC's service of a copy was deficient in that respect as well. The commission finds that insignificant in that there was no real question as to the authenticity of the motion.

128 (Popup)

[3]The commission notes that to establish the affirmative defense of incapacity of a foreign corporation to sue under RSA 293A:131 because of failure to register, a defendant must prove that the transaction out of which the action arose was an intrastate transaction, the transaction must have constituted doing business within the meaning of the chapter, and the defendant must show that the plaintiff was an unregistered foreign corporation. Guyette v. CNK Development Co., 122 N.H. 913, 451 A.2d 13, 18 (1982).

Consistent with the discussion of the statute above, Guyette refers to the defendant showing incapacity rather than the petitioner showing these matters. PSNH, however, is the petitioner in this proceeding. Second, PSNH has not proven these three factors.

The commission further notes that it has not even decided whether RSA 293-A:31 applies at all to administrative proceedings.

129 (Popup)

[4]On October 22, 1987, the commission received the PSNH Reply to Response of CUC

Regarding Intervention. The commission has also considered that filing prior to issuing this report and order.

130 (Popup)

[1]PSNH filed exhibit 56 on October 23, 1987 pursuant to direction of the commission during the October 22, 1987 hearing.

131 (Popup)

[1]The order on the CRR motion also included general discussion of the discovery process.

132 (Popup)

[1]The unit availability incentive feature (or Net Unscheduled Outage Adjustment) establishes targets for planned and unplanned outages in each ECRM filing for the upcoming six month period. Unplanned outages are determined by the average of the unplanned outages actually experienced for each unit during the last five year period.

