73 NH PUC 1

Re New England Telephone and Telegraph Company

DR 86-36
Order No. 18,956

New Hampshire Public Utilities Commission

January 4, 1988

ORDER deferring implementation of non-optional measured business service pending conclusion of a generic proceeding regarding the rate structure of a local exchange telephone carrier.

RATES, § 539 — Telephone — Non-optional measured business service — Deferral of implementation — Local exchange carrier.

[N.H.] A local exchange telephone carrier was directed to defer implementation of non-optional measured business service pending conclusion of a generic proceeding regarding the rate structure of the carrier.

By the COMMISSION:

ORDER

WHEREAS, this docket was opened pursuant to *Re New England Teleph. & Teleg. Co.*, DR 86-36, Order No. 18,119 (February 13, 1986) (71 NH PUC 124) for the purpose of determining what other action on the part of the Commission and New England Telephone and Telegraph Company (hereinafter NET) may be appropriate regarding the implementation of measured business service so as to best serve the public good; and

WHEREAS, pursuant to Order Nos. 18,264 (71 NH PUC 304) and 18,490 (71 NH PUC 705) NET implemented a comparative billing program for its business subscribers to show comparative billing of monthly service under flat rates and under measured rates; and

WHEREAS, NET filed with the Commission on November 13, 1987, a final report reflecting the comparative billing data collected by NET: and

WHEREAS, such report states that, if non-optional measured business service were implemented on a revenue-neutral basis, an increase in measured business rates would be necessary; and

WHEREAS, there is currently pending before the Commission a generic proceeding, Docket No. DR 85-182, with respect to NET's rate structure; it is hereby

ORDERED, that implementation of non-optional measured business service be deferred pending the conclusion of Docket No. DR 85-182, and NET provide a bill insert to its business subscribers notifying them of this order.

By order of the Public Utilities Commission of New Hampshire this fourth day of January, 1988.

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NH.PUC*01/04/88*[51910]*73 NH PUC 1*Granite State Electric Company

[Go to End of 51910]

73 NH PUC 1

Re Granite State Electric Company

DR 87-254
Order No. 18,957

New Hampshire Public Utilities Commission

January 4, 1988

ORDER authorizing an electric utility to decrease its rates to reflect reimbursement of conservation and load management expenditures previously included in basic rates.

Page 1

RATES, § 120 — Factors affecting reasonableness — Duplication of charges — Electric utility.

[N.H.] An electric utility was authorized to decrease it rates to reflect a decision by its sister corporation to reimburse the utility for conservation and load management expenditures previously included in its basic rates; the rate decrease was found to be just and reasonable because it would eliminate a potential duplication of charges.

By the COMMISSION:

ORDER

WHEREAS, on December 11, 1987 Granite State Electric Company, a duly organized public utility providing electric service within the jurisdiction of the New Hampshire Public Utilities Commission, filed revised tariff pages reflecting a decrease of 9.3¢ per 100 KWH; and

WHEREAS, said revised tariff pages result from a decision by New England Power Company (Granite State Electric Company's sister corporation) to reimburse Granite State Electric Company for load management and conservation expenditures as of January 1, 1988; and

WHEREAS, said expenditures were previously included in Granite State Electric Company's basic rates; and

WHEREAS, the proposed rate reduction is in the public good and is just and reasonable because it eliminates a potential duplication of charges; it is therefore

ORDERED, that Granite State Electric Company's

Sixth Revised Page 32;

Fourth Revised Page 34;

Fourth Revised Page 38;

Fourth Revised Page 39;

Fifth Revised Page 41;

Fifth Revised Page 45;

Sixth Revised Page 47;

Fourth Revised Page 52; and

Fourth Revised Page 54

of its tariff, NHPUC 10 — Electricity be, and hereby are, approved effective on January 1, 1988.

By order of the Public Utilities Commission of New Hampshire this fourth day of January, 1988.

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NH.PUC*01/04/88*[51911]*73 NH PUC 2*Granite State Electric Company

[Go to End of 51911]

73 NH PUC 2

Re Granite State Electric Company

DR 87-223
Order No. 18,958

New Hampshire Public Utilities Commission

January 4, 1988

ORDER authorizing an electric utility to decrease its purchased power cost adjustment rate to reflect a decrease in the rates charged by its wholesale power supplier.

AUTOMATIC ADJUSTMENT CLAUSES, § 13 — Purchased power — Retail electric utility.

[N.H.] An electric utility was authorized to decrease its purchased power cost adjustment rate to reflect a decrease in the rates charged by its wholesale power supplier.

APPEARANCES: For Granite State Electric Company, Philip Cahill, Esquire, Daniel D. Lanning for the staff.

By the COMMISSION:

REPORT

Page 2

On November 17, 1987 Granite State Electric (GSE) Company filed a revision to its Purchase Power Cost Adjustment (PPCA) rate. The proposed PPCA is an aggregate rate of $1.247 per 100 KWH and is a reduction of 12.6¢ per 100 KWH from the PPCA rate last approved by this Commission (W-8 (a)). Said reduction reflects a decrease in the purchase power wholesale rate charged by its GSE's power supplier, New England Power Company (NEP).

On December 29, 1987 a duly noticed hearing was held at the Commission's office in Concord, New Hampshire.

During said hearing GSE presented one witness in support of its petition. GSE's witness stated that the instant filing is made coincident with NEP's proposed W-9 wholesale rate, filed at the Federal Energy Regulatory Commission (FERC). Although the FERC has not approved this rate as yet, there has not been adverse intervention filed against NEP's petition, therefore, the witness believes that NEP's wholesale rate will become effective on January 1, 1988.

GSE's witness also stated that the reasonableness of the NEP rates were reviewed and approved by the Commission in DR 87-20, Report and Order No. 18,623 (72 NH PUC 119). This is the W-8(a) rate which was approved at a level above the proposed W-9 rate. Further, GSE's witness indicated that the contract GSE has with NEP requires a seven year notice of termination. It, therefore, is impractical for GSE to consider other energy alternatives in the near term.

Based on the evidence provided we find the filed PPCA W-9 rate to be just and reasonable and in the public good.

Our Order will issue accordingly.

ORDER

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

ORDERED, that Granite State Electric Company's Tariff, NHPUC NO. 10 — Electricity, original Page No. 31-k be, and hereby is, approved for effect on January 1, 1988.

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

1988.

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NH.PUC*01/05/88*[51912]*73 NH PUC 3*Fuel Adjustment Clause

[Go to End of 51912]

73 NH PUC 3

Re Fuel Adjustment Clause

Applicants: Connecticut Valley Electric Company, Inc., and Granite State Electric Company

DR 87-236
Order No. 18,959

New Hampshire Public Utilities Commission

January 5, 1988

ORDER revising the fuel adjustment clause rates of two electric utilities.

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1. AUTOMATIC ADJUSTMENT CLAUSES, § 7 — Cost recovery clauses — Fuel adjustment clause — Effective period — Electric utility.

[N.H.] An electric utility was authorized to change its fuel adjustment clause calculation from a semiannual forward looking calculation to an annual forward looking calculation; it was found that the stability of the fuel costs incurred by the utility's predominant supplier would permit accurate forecasting on a long term basis. p. 4.

2. AUTOMATIC ADJUSTMENT CLAUSES, § 54 — Fuel adjustment clause — Over- and undercollections — Interest rate — Electric utility.

Page 3

[N.H.] An electric utility was authorized to change the interest rate applicable to fuel adjustment clause over- and undercollections so that it would equal the interest rate used for customer deposits. p. 4.

3. AUTOMATIC ADJUSTMENT CLAUSES, § 11 — Fuel adjustment clause — Oil conservation adjustment — Direct costs — Fossil fuel — Electric utility.

[N.H.] The fuel adjustment clause and oil conservation adjustment rates of an electric utility were decreased to reflect forecasted reductions in the price of oil. p. 5.

APPEARANCES: For Connecticut Valley Electric Company, Inc., Morris Silver, Esq.; for Granite State Electric Company, Philip Cahill, Esq.; Daniel D. Lanning and Dr. Laura Lehner for Staff.

By the COMMISSION:

REPORT

The Public Utilities Commission held a duly noticed hearing at its office in Concord, New Hampshire on December 28 and 29, 1987 to review the Fuel Adjustment Clause (FAC) filings of Granite State Electric Company for the first half of 1988 and Connecticut Valley Electric Company, Inc., for the year ending December 31, 1988.

I. *Connecticut Valley Electric Company, Inc.,* (CVEC)

On December 2, 1987 CVEC filed a revised FAC rate for the period January — December, 1988, of $0.0153 per kwh.

CVEC presented three witnesses to support its filing. Mr. Clifford E. Giffin testified on Central Vermont Public Service's system energy mix and costs, Mr. C. J. Frankiewicz testified to the calculation of the FAC and the reconciliation of the prior period and Mr. William J. Kekhan testified on the sales forecast for the first half of 1988.

Through testimony and cross-examination of these witnesses, the following issues were discussed:

1. Sales forecast;

2. An annual FAC;

3. Changing the interest rate charged on over/under collection of the FAC;

4. Lost and unaccounted for and company use; and

5. Qualified Facilities (Q.F.) as a component to the FAC.

[1] The proposed filing includes two changes to the FAC calculation. The first change calculates the FAC on an annual basis, not a six month basis as calculated in previous FAC calculations. This change was discussed in the last FAC docket, DR 87-101. Discussions and approval of this change was reserved for the instant proceeding. We believe the generation mix of CVEC's predominant supplier of electricity, Central Vermont Public Service Corporation, has relatively fixed fuel related costs. Therefore, the stability of these costs permit accurate forecasting on long term basis. Accordingly we allow CVEC to change its FAC from a semiannual forward looking calculation to an annual forward looking calculation.

[2] The second change proposed in CVEC's filing is the change in interest

rates charged to the over/under collection of the FAC. CVEC proposes to utilize the interest rate used for customer deposits per P.U.C. rule No. 303.04(b)(2). This is an interest rate equal to the New York Prime Rate and will be fixed on a quarterly basis for periods ending March, June, September and December.

We believe this is a just and reasonable formula and accordingly will approve its use in the instant filing.

II. *Granite State Electric Company*

Granite State Electric Company (Granite) made its January-June 1988 filing for an FAC and Oil Conservation Adjustment rate (OCA) on December 2, 1987. Granite had an FAC rate of $0.586 per 100 KWH in effect for July 1, 1987 through December 31, 1987 and an OCA rate of $0.125 per 100 KWH for the same period.

The rates requested on December 2, 1987 were $0.465 per 100 KWH for FAC and $0.055 per 100 KWH for OCA. In addition, Granite filed revised Qualified Facilities tariff rates.

Issues raised during a duly noticed December 29, 1987 hearing included:

1. A decrease in the estimated oil prices for the upcoming period;

2. The sales projections for the period January-June 1988;

3. Scheduled outages of New England Power Company's (Granite's principal supplier of electricity) generating units;

4. Line loss and Company electricity use;

5. Coal supply; and

6. NEEI payments.

[3] According to a Granite witness, the price of oil has dropped substantially from the date Granite developed its estimate of oil prices in the instant filing. The oil prices in said filing ranged changed from $14 per barrel to $15 per barrel. Per Granite's witness the revised oil prices were estimated to be from $10 per barrel to $13 per barrel. However, Granite believed that even with this reduction in estimated oil costs, the FAC rate would not change significantly. Granite believed this was particularly true when certain off-setting factors were considered. These were: a) the extended outage of the Millstone 3 Unit and the Connecticut Yankee Unit; b) a change in the scheduled outage of Salem Harbor 4 and the cost of replacement power for all three.

After due consideration of the arguments, this Commission requested an updated filing which utilized all new information. In compliance thereof, on December 31, 1987 Granite filed revised FAC and OCA rates reflecting a reduction of $0.166 per 100 KWH and $0.058 per 100 KWH from the previously filed FAC and OCA rates, respectively. This new filing represents an additional aggregate savings to ratepayers of approximately $660,000 over the upcoming FAC/OCA period.

The revised rates are $0.299 per 100 KWH for the FAC and a surcharge credit of $(0.003) per 100 KWH for OCA.

Based on the evidence provided, we will approve the revised FAC rate of $0.299 per 100 KWH, the revised OCA surcharge credit of $(0.003) per 100 KWH, and the originally filed QF rates as filed.

Our order will issue accordingly.

ORDER

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

ORDERED, that 111th Revised Page 18 of Connecticut Valley Electric Company, Inc.'s tariff, NHPUC No. 4 — Electricity, providing for a fuel surcharge of $1.53 per 100 KWH for the months of January through December 1988, be, and hereby is, permitted to go into effect for January 1, 1988; and it is

FURTHER ORDERED, that 4th Revised Page 16 of Connecticut Valley Electric Company, Inc.'s tariff, NHPUC NO. 4 — Electricity, be, and hereby is, permitted to go into effect for January 1, 1988; and it is

FURTHER ORDERED, that Twenty-Fifth Revised Page 30 of Granite State Electric Company's tariff, NHPUC NO. 10 — Electricity, providing for a fuel surcharge of $0.299 per 100 KWH for the months of January through June 1988, be, and hereby is, permitted to go into effect for January l, 1988; and it is

FURTHER ORDERED, that Twenty-First Revised Page 57 of Granite State Electric Company's tariff, NHPUC No. 10 — Electricity, providing for an Oil Conservation surcharge credit of $(0.003) per 100 KWH for the months of January through June, 1988, be, and hereby is, permitted to go into effect for January 1, 1988; and it is

FURTHER ORDERED, that Ninth Revised Page 11-C of Granite State Electric Company's tariff, NHPUC No. 10 — Electricity, providing for a Qualified Facility Power Purchase Rate, be, and hereby is, accepted for effect during January through June, 1988.

By order of the Public Utilities Commission of New Hampshire this fifth day of January, 1988.

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NH.PUC*01/05/88*[51913]*73 NH PUC 6*Connecticut Valley Electric Company, Inc.

[Go to End of 51913]

73 NH PUC 6

Re Connecticut Valley Electric Company, Inc.

DR 87-241
Order No. 18,960

New Hampshire Public Utilities Commission

January 5, 1988

ORDER authorizing an electric utility to increase its purchased power cost adjustment rate.

AUTOMATIC ADJUSTMENT CLAUSES, § 13 — Purchased power — Retail electric utility.

[N.H.] An electric utility was authorized to increase its purchased power cost adjustment rate to reflect the wholesale rates filed with the Federal Energy Regulatory Commission (FERC) by its principal wholesale supplier; (the increase, which amounted to 17.8% on an annual basis, was

caused predominantly by the completion of a FERC-mandated refund from the wholesale supplier.)

APPEARANCES: For Connecticut Valley Electric Company, Inc., Morris Silver, Esquire; Dr. Laura Lehner and Daniel D. Lanning for the Staff.

By the COMMISSION:

REPORT

On December 2, 1987 Connecticut Valley Electric Company, Inc. (CVEC) filed a revised Purchase Power Cost Adjustment (PPCA) rate with a proposed effective date of January 1, 1988. Said PPCA rate of $0.0242 per KWH is an increase of $0.014 per KWH over the interim PPCA rate of $0.0102 per KWH approved by this Commission in DR 87-149, Report and Order

Page 6

No. 18,824.

On December 28, 1987 the Commission held a duly noticed hearing wherein the merits of CVEC's filing were reviewed.

During the hearing CVEC presented one witness, C.J. Frankiewicz. Mr. Frankiewicz explained the reason for the increase in the PPCA rate, as filed. This increase of 17.8% on an annual basis is predominantly caused by the completion of a refund from Central Vermont Public Service Corp. (CVEC's principle supplier of electricity) made over a four month period. This refund was mandated by the FERC and was applicable to a reduced cost of equity in Central Vermont's capital structure. Mr. Frankiewicz further explained that if the revised PPCA rate was compared to the aggregate PPCA rates in effect for 1987 the increase would only be 3%.

Based on the evidence provided we find the revised PPCA rate to be just and reasonable and in the public good. This rate is estimated and is subject to reconciliation at the FERC.[1]

Our Order will issue accordingly.

ORDER

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

ORDERED, that Connecticut Valley Electric Company, Inc.'s tariff, NHPUC No. 4 — Electricity, 14th Revised Page 17, be, and hereby is, approved effective on all bills rendered on or after January 1, 1988; and it is

FURTHER ORDERED, that Connecticut Valley Electric Company, Inc.'s tariff, NHPUC No. 4 — Electricity, 5th Revised Page 13 be, and hereby is, approved effective January 1, 1988.

By order of the Public Utilities Commission of New Hampshire this fifth day of January, 1988.

FOOTNOTES

[1]The revised PPCA rate is based on a forecast of the 1988 calendar year power requirements of Central Vermont wholesale customers, as filed at the Federal Energy Regulatory Commission (FERC). Each year Central Vermont files a revised wholesale rate application with the FERC effective on January 1. This rate has a true-up in the month of May following the end of the forecasted year. Effectively the wholesale rate changes twice a year, once for the forecast and once for the true-up of the previous.

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NH.PUC*01/06/88*[51914]*73 NH PUC 7*Fuel Adjustment Clause

[Go to End of 51914]

73 NH PUC 7

Re Fuel Adjustment Clause

Applicants: Concord Electric Company and Exeter and Hampton Electric Company

DR 87-236
Supplemental Order No. 18,962

New Hampshire Public Utilities Commission

January 6, 1988

ORDER revising the fuel adjustment clause rates of two electric utilities.

AUTOMATIC ADJUSTMENT CLAUSES, § 9 — Fuel adjustment clause rates — Cost elements — Revisions to proposed rates — Electric utilities.

[N.H.] The proposed fuel adjustment clause (FAC) rates of two electric utilities were revised to reflect falling oil prices, the delayed start-up of a small power production unit, and a decrease in lost and unaccounted for fuel; the revised FAC rates were accepted by the commission subject to adjustment depending on the utilities' classification in the Franchise Tax Docket, DR 83-205, Order No. 15,624.

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APPEARANCES: Paul K. Connolly, Jr. of LeBoeuf, Lamb, Leiby and Macrae for Concord Electric Company and Exeter and Hampton Electric Company; Daniel D. Lanning for the Staff.

By the COMMISSION:

REPORT

On December 1, 1987, Concord Electric Company (Concord) and Exeter & Hampton Electric Company (E&H) (collectively the “companies”) filed revised Fuel Adjustment Clause

rates (FAC) for the period January through June 1988.

Concord's FAC in effect during the period July 1, 1987 through December 31, 1987 was a credit of $(0.685) per 100 kwh for Concord and a credit of $(0.626) per 100 kwh for E&H. These two companies filed revised FAC surcharge credits of $(0.643) per 100 kwh and $(0.649) per 100 kwh for Concord and E&H respectively, net of franchise tax.

On December 21, 1987 E&H filed an update to its originally filed FAC. The second FAC filing increased E&H's rate to $(0.629) per 100 kwh.

On January 4, 1988 a duly noticed hearing was held wherein Concord and E&H presented three witnesses.

Through testimony and cross-examination the following issues were explored:

1. The falling price of oil and its impact on the current FAC filings;

2. The delay of a small power producer unit start-up;

3. The lost and unaccounted for and company use estimate used in calculating the FAC; and

4. An annual FAC.

During the hearing a witness for the companies stated that the cost of oil was currently less than when the December 21, 1987 filing was developed. He further indicated that the oil prices now lean toward a slight decrease in the first half of 1988. This was not reflected in the companies filing.

In addition to the above, two other factors were considered which would decrease the filed FAC rates. The first was an increase in lost and unaccounted for during November which was caused by an unexpected increase in demand at the end of the month. This caused a billing lag (increasing lost and unaccounted for) which is collected in December, decreasing lost and unaccounted for during that month. The December 21, 1987 revision did not account for the expected reduction in December's lost and unaccounted for.

The second factor reducing the FAC rate is the delay in the Penobscot small power producing unit start-up. This unit was projected to be on line by January 1, 1988 but failed to meet its deadline. The loss of this capacity decreased the estimated cost of fuel for the first half of 1988.

Based on these factors this Commission requested that Concord and E & H revise its FAC rate. Said revised FAC components are $(0.819) per 100 KWH and $(0.828) per 100 KWH for Concord and E & H respectively, net of franchise tax, filed January 5, 1988.

Upon review of the revised FAC components we find said rates to be just and reasonable.

Our order will issue accordingly.

SUPPLEMENTAL ORDER

Page 8

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

ORDERED, that 10th Revised Page 20A of Concord Electric Company tariff, NHPUC No. 10 — Electricity, providing for a fuel surcharge credit of $(0.819) per 100 KWH for the months of January through June 1988, be, and hereby is permitted to go into effect on January 1, 1988; and it is

FURTHER ORDERED, that 36th Revised Page 19A of Exeter & Hampton Electric Company tariff, NHPUC No. 15 — Electricity providing for a fuel surcharge credit of $(0.828) per 100 KWH for the months of January through June 1988 be, and hereby is, permitted to go into effect on January 1, 1988.

The above noted rates may be adjusted by a factor of approximately 1% depending upon the utilities classification in the franchise tax docket, DR 83-205, Order No. 15,624.

By order of the Public Utilities Commission of New Hampshire this sixth day of January, 1988.

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NH.PUC*01/06/88*[51915]*73 NH PUC 9*Concord Electric Company

[Go to End of 51915]

73 NH PUC 9

Re Concord Electric Company

Additional applicant: Exeter and Hampton Electric Company

DR 87-242
Order No. 18,963

New Hampshire Public Utilities Commission

January 6, 1988

ORDER revising the purchased power adjustment clause rates of two electric utilities.

AUTOMATIC ADJUSTMENT CLAUSES, § 13 — Purchased power adjustment clause — Electric utilities.

[N.H.] The purchased power adjustment clause (PPAC) rates of two electric utilities were revised to reflect a delay in the start-up of a small power production unit and a change in the calculation of December 1987 lost and unaccounted for energy; the revised PPAC rates were accepted by the commission subject to adjustment depending on the utilities' classification in the Franchise Tax Docket, DR 83-205, Order No. 15,624.

APPEARANCES: Paul K. Connolly, Jr., Esquire, for Concord Electric Company and Exeter & Hampton Electric Company; Daniel D. Lanning for staff.

By the COMMISSION:

REPORT

On December 1, 1987 Concord Electric Company and Exeter & Hampton Electric Company ("Concord", "Exeter & Hampton" or collectively the "Companies") filed revised purchase power adjustment charges (PPAC) effective January 1, 1988. On December 4, 1987 the Commission issued an Order of Notice scheduling a hearing on January 4, 1988.

On December 21, 1987 the Companies revised their PPAC filing from $1.057 per 100 kwh and $1.013 per 100 kwh to $1.045 per 100 kwh and $1.038 per 100 kwh for Concord and Exeter & Hampton respectively.

In the January 4, 1988 hearing the Companies presented three witnesses. Testimony by the Companies' witness revealed a substantial increase in the Companies PPAC rates. This increase was predominantly caused by a reduction in the

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unbilled prior credits from the Companies wholesale energy supplier, Unitil Power Corporation.

Through cross-examination of the Companies witnesses it was further discovered that because of a delay in the Penobscot small power producer unit start-up and a change in the calculation of December 1987 estimated lost and unaccounted for energy the proposed PPAC rates would decrease. See DR 87-236. Accordingly, the Companies refiled their PPAC rate on January 5, 1988 to $0.983 per 100 kwh and $0.975 per 100 kwh for Concord and Exeter & Hampton respectively.

Based on the evidence provided, the Commission will accept the filed rates of $0.983 per 100 kwh and $0.975 per 100 kwh 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 Concord Electric Company's 7th revised page 19A of its tariff NHPUC No. 10 — Electricity, providing for a Purchase Power Adjustment Charge of $.983 per 100 kwh for the months of January through June 1988, be, and hereby is, permitted to go into effect for January 1, 1988, and it is

FURTHER ORDERED, that Exeter & Hampton Electric Company's 7th revised page 18 of its tariff NHPUC No. 15 — Electricity, providing for a Purchase Power Adjustment charge of $.975 per 100 kwh for the months of January through June 1988, be, and hereby is, permitted to go into effect for January 1, 1988.

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 sixth day of January, 1988.

73 NH PUC 10

Re Southern New Hampshire Water Company, Inc.

DF 87-215
Order No. 18,964

New Hampshire Public Utilities Commission

January 7, 1988

ORDER authorizing a water utility to issue and sell bonds and common stock, increase its authorized capital, and temporarily have a short-term debt limit of $3 million.

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1. SECURITY ISSUES, § 44 — Factors affecting authorization — Water utility.

[N.H.] A water utility was authorized to issue and sell bonds and common stock, increase its authorized capital, and temporarily have a short-term debt limit of $3 million; the security issues were approved for the purpose of (1) supporting growth within the service territory of the utility, (2) solving long-standing problems with the wells system of the utility, and (3) restoring a reasonable and stable capital structure of predominantly long-term capital. p. 11.

2. SECURITY ISSUES, § 129 — Procedure and practice — Approval of debt instruments based upon draft documents.

[N.H.] It is a common practice for the commission to allow a utility to issue debt instruments based upon draft documents that may be subject to minor revisions before they are finalized. p. 11.

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APPEARANCES: J. Christopher Marshall, Esquire and Robert W. Phelps, Assistant Treasurer and Director representing Southern New Hampshire Water Company; Larry S. Eckhaus, Esquire for Consumer Advocate; Eugene F. Sullivan, Commission Finance Director and Sarah Voll, Chief Economist for the Commission.

By the COMMISSION:

REPORT

By petition filed November 3, 1987, Southern New Hampshire Water Company, a corporation duly organized and existing under the laws of the State of New Hampshire and

operating as a water public utility under the jurisdiction of this commission, seeks authority pursuant to the provisions of RSA 369:1 to issue and sell for cash at par Two Million Dollar ($2,000,000) principal amount of First Mortgage Bonds, Series G, 10.55% due 2007, and Two Million Dollar ($2,000,000) principal amount of First Mortgage Bonds, Series H, and authority to increase its authorized capital stock to 15,000 shares to issue and sell 5,800 shares of $100 par value common stock for a total price of $2,000,000, and to issue short-term notes not in excess of $3,000,000.

[1, 2] At the hearing on the petition, held in Concord on December 1, 1987, Robert W. Phelps, Assistant Treasurer and Director of the Company, testified that the proceeds of these issues would be used to support the growth in general within the Company's franchise areas and to provide the additional financial requirements related to solving long-standing problems in Policy Wells Systems, and to restore a reasonable and stable capital structure of predominantly long-term capital, both debt and common equity, using a traditional, conservative approach to financing capital expenditures. Mr. Phelps further testified that the Company continues to need the flexibility of the authority to borrow short-term debt up to the $3,000,000 level, as granted in commission Order 18,404, in order to support the continuing construction requirements as growth has not abated.

Southern New Hampshire Water Company, in a motion to amend its supplement petition filed December 24, 1987, stated that as a result of an internal audit conducted by the parent corporation, Consumers Water Company (Consumers), their income statement for the period ending October 31, 1987 will require a negative adjustment in operating revenue of $181,403.

In order to issue the Series G bonds, Southern New Hampshire Water requested that the Petition be amended as stated in the prayer for relief to reflect the use of the proceeds to reduce short-term debt and redeem outstanding bonds and for additional working capital. The commitment letter does not provide for a specific expiration date of the proposed buyer's commitment to purchase the Series G bonds. Allstate Insurance Company has requested that as a compromise position, a fee in the amount of up to $20,000 be charged to continue its commitment after February 1, 1988.

In its motion to amend and supplement the petition filed December 24, 1987, Southern New Hampshire Water Company requested that Paragraphs 5 and 12.A of the petition be amended to read as follows:

5. “The net proceeds of the proposed Series “G” bonds will be used to retire short-term notes, redeem the Series “B” and “C” bonds including principal, interest

Page 11

and premium due thereon and replenish working capital, and the net proceeds of the Series “H” bond will be used to retire short-term notes and replenish working capital.”

12. A “Issuance of the bonds and stock will allow the Petitioner to reduce its current short-term debt due in 1987 and to redeem the Series B and C bonds.”

The Office of Consumer Advocate had several concerns about this filing; among them were issues regarding the Bond Purchase Agreement and Seventh and Eighth Supplemental Indenture,

establishing an expiration date of the prospective bond purchaser's commitment to purchase the Series H bonds, and the requested $3,000,000 limit for short-term debt.

The consumer advocate urged that the commission's authorization of the Series H bond issuance should expire on May 31, 1988, the expiration date of the prospective bond purchaser's commitment to purchase the bonds. Southern New Hampshire Water Company in its response to the Brief of the Consumer Advocate, states that it has no objection to such a limitation on the authorized period. The commission would establish May 31, 1988 as an expiration date of the prospective bond purchaser's commitment to purchase the bonds. However, this limitation is without prejudice to the submission of a request by the petitioner to the commission for an extension of said period if necessary.

The Consumer Advocate further suggested that the short-term debt limit of $3,000,000 currently authorized be continued temporarily. The Consumer Advocate maintains that the Company's short-term debt limit should be established at $2,000,000 following the issuance of the Series H bonds. Southern New Hampshire Water Company requested that an extension of its existing $3,000,000 short-term debt limit be allowed, although they state that $2,000,000 is the minimum level that prospective bond purchasers are interested in purchasing, and that this level may well increase by the time Southern New Hampshire Water Company solicits prospective purchasers of the next series of bonds.

The Consumer Advocate also had concerns with the Southern New Hampshire treatment of Advances from Affiliated Companies and Payables to Affiliated Companies, and stated that under the Uniform Classification of Accounts, these are to be considered long-term and short-term debt obligations of the utility. In calculating the current debt to equity ratio, Southern New Hampshire did not include the advances in either long term debt or equity. Therefore, the Consumer Advocate claims that Southern New Hampshire Company exceeded its authorized short-term debt limit. Southern New Hampshire Water Company asserts that the advance made by Consumers Water Company is an advance of a capital contribution rather than a short-term debt, and the treatment of the advance as capital serves only as a benefit for the ratepayers, since no request for a return on this equity advance has been made.

Another concern expressed by the Consumer Advocate was the timing of this filing. The petition was filed on November 3, 1987 requesting that the commission consider the petition on an expedited basis. According to the response to a Transcript Request the Board of Directors of Southern New Hampshire Water Company and its sole stockholder, Consumers, did not authorize the filing of the petition in this proceeding until November 30, 1987. Southern New Hampshire Water Company, in its response to the Consumer Advocate's Brief, states that it does not

require advance board of director approval of the filing of a petition.

The commission will allow the Company to issue the First Mortgage Bonds, Series G, 10.55% due 2007. It is a common procedure for the commission to allow a utility to issue debt instruments based upon draft documents which may have minor changes to them before they are finalized. We will expect the Company to notify the commission of the minor changes in them

before they are finalized. We will expect the Company to notify this commission of the minor changes so that we can be assured that the bond purchase agreement and indenture have not been substantially changed. A final version of those documents should be filed with the commission, in a timely manner so as to assure that the additional commitment fee of up to $20,000 requested by Allstate Insurance Company and agreed to by the Company be avoided.

The commission will also approve the issuance of Series H bonds in principal and will require the Company to provide the final Bond Purchase Agreement and Eighth Supplemental Indenture for final approval. The authorization date for the Series H bond will expire on May 31, 1988, the expiration date of the prospective bond purchaser's commitment to purchase the bonds. In the event that an extension to that date is necessary the Company should make such a request to the commission, and provide an explanation of the reasons for the extension.

Upon review of the record, it is the decision of this commission that the short-term borrowing limit of $3,000,000 shall remain in effect until the Company has received the receipts from the issuance of the Series H bonds. At that time the short-term borrowing level will revert to $2,000,000. Witness Phelps testified that after the issuance of the bonds the Company would initially have no short-term debt and with continuing construction would reach a level of $1,300,000 by year end 1988. He further testified that the short-term debt level would exceed $2,000,000 over several years. From the commission perspective, the requested $3,000,000 is not required through 1988. When a level of short-term debt in excess of $2,000,000 is required, the Company should request an increased level. That approval can be authorized on an expedited basis.

Finally, the Consumer Advocate's position related to Advances from Affiliated Companies would normally be valid. However, in this case the parent of Southern New Hampshire Water Company, Consumers Water, was advancing funds as an advance of a capital contribution and interest was not charged for the advance. We will, therefore, not regard the advance as short-term debt and will consider the advance as equity. However, in the future we would expect an equity infusion would not take almost a year to accomplish. The Company informed the staff on January 16, 1987 that the Board of Directors of Consumers Water Company would be asked to approve authority for an infusion of additional common equity. The advance should have been converted to common equity early in 1987.

Based upon all the evidence, the commission finds that the net proceeds from the proposed Series “G” bonds will allow the Company to retire short-term notes, redeem the Series “B” and “C” bonds including principal, interest and premium due thereon and replenish working capital, and the net proceeds of the Series “H” bonds will be used to retire short-term notes and replenish working capital, and further finds that the proposed financing will be consistent with the public good.

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Our Order will issue accordingly.

ORDER

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

ORDERED, that the Southern New Hampshire Water Company be, and hereby is, authorized to issue and sell for cash at par Two Million Dollars ($2,000,000) of its First Mortgage Bonds, Series G, 10.55% due 2007, such bonds to be issued and sold in accordance with the terms and conditions set forth in the petition filed on November 2, 1987, as amended pursuant to the Motion to Amend Petition filed on December 24, 1987 and substantially in accordance with Exhibit M, Commitment letter between Southern New Hampshire and Allstate Life Insurance Company; Exhibit T, Commitment fee of up to $20,000 by Southern New Hampshire Water to Allstate Life Insurance Co.; Exhibit G-2, Revised Bond Purchased Agreement and Exhibit H-2, Revised Seventh Supplemental Indenture; and it is

FURTHER ORDERED, that in connection with said sale and issuance of bonds that Southern New Hampshire Water Company be, and hereby is, authorized to execute and deliver to the trustee a seventh supplemental indenture that is substantially in the form of Revised Exhibit H-2, a bond substantially in the form contained in Revised Exhibit H-2 and to execute and deliver to the purchaser of the bond a bond purchase agreement that is substantial in the form of Revised Exhibit G-2; and it is

FURTHER ORDERED, that Southern New Hampshire Water Company be, and hereby is, authorized to increase its authorized capital to 15,000 shares of the $100.00 par value common stock; and it is

FURTHER ORDERED, that Southern New Hampshire Water Company be, and hereby is, authorized to issue 5,800 shares of $100.00 par value common stock for $344.79 per share or $2,000,000 in cash to Consumers Water Company (Consumers); and it is

FURTHER ORDERED, that Southern New Hampshire Water Company be, and hereby is, authorized to have a short-term debt level of $3,000,000 as previously authorized in Order No. 18404 until such time that the First Mortgage Bonds, Series H are issued, at that time the short-term debt limit will be reduced to the $2,000,000 level; and it is

FURTHER ORDERED, that Southern New Hampshire Water Company be, and hereby is, authorized to issue and sell for cash at par $2,000,000 of its First Mortgage Bonds, Series H, such bonds to be issued and sold in accordance with the terms and conditions set forth in the petition filed November 2, 1987 and substantially in accordance with the terms and conditions set forth in Exhibit M, subject to the final commission authorization of the terms and conditions of a bond purchase agreement concerning the sale of such bonds and of an eighth supplemental indenture.

By order of the Public Utilities Commission of New Hampshire this seventh day of January, 1988.

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NH.PUC*01/08/88*[51917]*73 NH PUC 15*Northland Development Company

[Go to End of 51917]

Re Northland Development Company

DS 87-260
Order No. 18,965

New Hampshire Public Utilities Commission

January 8, 1988

ORDER nisi authorizing a development company to construct, use, maintain, repair and reconstruct a sewer connector on state-owned railroad property.

CERTIFICATES, § 88 — Factors affecting grant or refusal — Public convenience and necessity — Approval of other state agencies — Construction of sewer connector.

[N.H.] A development company was conditionally authorized to construct, use, maintain, repair and reconstruct a sewer connector on state-owned railroad property where (1) the appropriate state agencies had approved the plan, (2) the construction would provide needed sewer service, and (3) the construction was determined to be in the public good; final authorization was conditioned on the public being afforded an opportunity to comment on the proposal, and on all construction meeting the requirements of other state agencies.

By the COMMISSION:

ORDER

WHEREAS, on December 23, 1987, Steven J. Smith Associates, Inc. (petitioner) filed with this commission on behalf of its client, Northland Development Co. (Northland), a petition seeking license to construct, use, maintain, repair and reconstruct an 8” sewer connector at the intersection of Jefferson Road in Belmont, New Hampshire, and railroad property owned by the State of New Hampshire, said connector needed to serve the sewer requirements of the affected area; and

WHEREAS, the petitioner has coordinated its planning for said sewer connector facilities with New Hampshire Department of Transportation's Bureau of Railroads of the Department of Transportation and will construct said facilities according to plans approved by that agency; and

WHEREAS, said construction will provide needed sewer service in the area developed by Northland; and

WHEREAS, such improvement is in the public good; and

WHEREAS, Smith Associates has assured the commission that said sewer connector will be transferred to the Town of Belmont and that all subsequent maintenance, repair or replacement will be the town's responsibility; and

WHEREAS, any payments due for the use of said sewer connector will be made to the Town of Belmont according to terms and conditions prescribed by the town; and

WHEREAS, license granted under RSA 371:17 shall not preclude further actions by this commission should the sewer plant discussed herein be classed as a public utility in subsequent proceedings; and

WHEREAS, the public should be offered the opportunity to respond in support of or in opposition to said petition; and it is

ORDERED, that all persons interested in responding to this petition be notified that they may submit their comments or file a written request for hearing on the matter before this commission no later than January 27, 1988; 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

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no later than January 15, 1988, 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 Northland be, and hereby is authorized under RSA 371:17 et seq to construct, use, maintain, repair and reconstruct an 8" sewer connector within the Concord-to-Lincoln Railroad right-of-way at its intersection with Jefferson Road, Belmont, New Hampshire at approximate Valuation Station 1219 + 35, Map V21/58; and it is

FURTHER ORDERED, that all construction meet the requirements of the NHDES Division of Water Supply and Pollution Control and the NHDOT Bureau of Railroad and as depicted on drawings 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 eighth day of January, 1988.

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NH.PUC*01/08/88*[51918]*73 NH PUC 16*C. M. B. Construction Company, Inc.

[Go to End of 51918]

73 NH PUC 16

Re C. M. B. Construction Company, Inc.

DS 87-261
Order No. 18,966

New Hampshire Public Utilities Commission

January 8, 1988

ORDER nisi authorizing a construction company to construct, use, maintain, repair and reconstruct a sewer connector and manhole on state-owned railroad property.

CERTIFICATES, § 88 — Factors affecting grant or refusal — Public convenience and necessity — Approval of other state agencies — Construction of sewer connector.

[N.H.] A construction company was conditionally authorized to construct, use, maintain, repair and reconstruct a sewer connector and manhole on state-owned railroad property where (1) the appropriate state agencies had approved the plan, (2) the construction would provide needed sewer service, and (3) the construction was determined to be in the public good; final authorization was conditioned on the public being afforded an opportunity to comment on the proposal, and on all construction meeting the requirements of other state agencies.

By the COMMISSION:

ORDER

WHEREAS, on December 23, 1987, Steven J. Smith Associates, Inc. (Petitioner) filed with this Commission on behalf of its client, C. M. B. Construction Co., Inc. (CMB), a petition seeking license to construct, use, maintain, repair and reconstruct sewer connector and manhole in Meredith, New Hampshire, on railroad property owned by the State of New Hampshire, said facilities needed in the development of Grouse Point; and

WHEREAS, the petitioner has coordinated its planning for said facilities with the Bureau of the Railroads of the New Hampshire Department of Transportation and will construct said facilities according to plans approved by that agency; and

WHEREAS, said construction will extend sewer facilities to the affected area; and

WHEREAS, such improvement is determined in the public good; and

WHEREAS, the petitioner has assured the commission that the sewer connector and manhole described herein will be transferred to the Town of Meredith and that all subsequent maintenance, repair or replacement will be the Town's responsibility; and

WHEREAS, payments for use of these facilities shall be made to the Town of Meredith according to terms and conditions prescribed by the town; and

WHEREAS, license granted under the instant procedure shall not preclude further actions by this commission should the sewer plant discussed herein be classed as a public utility in subsequent proceedings; 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 January 27 , 1988; 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 January 15 , 1988, 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 C. M. B. Construction Co., Inc. be, and hereby is authorized under RSA 371:17 et seq to construct, use, maintain, repair and reconstruct a sewer connector and manhole within the Concord-to-Lincoln Railroad right-of-way in Meredith, New Hampshire between approximate Valuation Stations 1918 + 10 and 1918 + 50, Map V21/72; and it is

FURTHER ORDERED, that all construction meet the requirements of the N.H. DES, Division of Water Supply and Pollution Control and the N.H. DOT, Bureau of Railroads and as depicted on drawings 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 eighth day of January, 1988.

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NH.PUC*01/08/88*[51919]*73 NH PUC 17*Public Service Company of New Hampshire

[Go to End of 51919]

73 NH PUC 17

Re Public Service Company of New Hampshire

DE 87-251
Order No. 18,967

New Hampshire Public Utilities Commission

January 8, 1988

APPLICATION to alter electric utility service territory boundaries; granted.

SERVICE, § 198 — Extensions — Electric utility service boundaries — New customer.

[N.H.] Electric utility service territory boundaries were altered to allow an extension by one electric utility into the service territory of another where the other utility had requested the extension, all parties agreed, and the requested extension was the most practical way to serve a new customer.

By the COMMISSION:

ORDER

WHEREAS, on December 8, 1987, upon the request of Exeter and Hampton Electric Company, Public Service Company of New Hampshire filed with this Commission, a petition pursuant to RSA 374:22-C (IV) to extend its facilities along Bunker Hill Avenue, North Hampton, New Hampshire to serve a new resident who is presently located in the Exeter and Hampton's franchise area in Stratham, New Hampshire; and

WHEREAS, the customer involved, Mr. Stephen J.C. Woods, has signified in writing that he has no objection to the proposed transfer of service, where such assent is on file with this Commission; and

WHEREAS, such service can be more reasonably provided by Public Service Company of New Hampshire thus being 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 January 27, 1988; 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 January 20, 1988 and documented by affidavit to be filed with this office on or before January 27, 1988 ; and it is

FURTHER ORDERED, that the two companies file revised Commission Service Territory Maps within thirty days, reflecting the above changes in service territories brought about by this revision in franchise areas; and specifying thereon that the maps are effective on the date hereof by authority of the above NHPUC Order No.; and it is

FURTHER ORDERED, *NISI* that pursuant to the provisions of RSA Chapter 374:22 C; a limited portion of the service areas be altered and electric service to the above named customer be, and hereby is, authorized to be transferred from Exeter and Hampton to Public Service effective on a date convenient to all parties concerned, such authorization being granted without hearing, as provided by RSA Chapter 374:26 when all interested parties are in agreement.

By order of the Public Utilities Commission of New Hampshire this eighth day of January, 1988.

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NH.PUC*01/13/88*[51920]*73 NH PUC 18*Continental Telephone Company of New Hampshire, Inc.

[Go to End of 51920]

73 NH PUC 18

Re Continental Telephone Company of New Hampshire, Inc.

DF 87-258
Order No. 18,972

New Hampshire Public Utilities Commission

January 13, 1988

APPLICATION for approval to issue securities; granted.

SECURITY ISSUES, § 44 — Factors affecting authorization — Reduction of short-term indebtedness — Telephone utility.

[N.H.] A telephone utility was authorized to issue and sell a note the proceeds of which would be used to reduce the short-term indebtedness for borrowed money used for telephone plant construction and to fund other general cash flow requirements, and to repay a note previously issued at a higher rate of interest.

By the COMMISSION:

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ORDER

WHEREAS, Continental Telephone Company of New Hampshire, Inc. (Contel) ("Contel of New Hampshire, Inc.") is a telephone public utility, having it's principal business office in the Town of Pembroke in the County of Merrimack, duly organized and existing under the laws of the State of New Hampshire; and

WHEREAS, Contel, on November 30, 1987 notified this commission, by letter from Dennis F. Myers, President, of its intent to change, effective January 1, 1988, its corporate name to "Contel of New Hampshire, Inc."; and

WHEREAS, Contel, on December 21, 1987 filed an application for approval of the issuance and sale of its 10% Promissory Note due February 1, 1998 in the principal amount of $2,500,000; and

WHEREAS, Contel, proposes to issue and sell to Nationwide Life Insurance Company at private sale for cash equal to the principal amount thereof, a promissory note of Contel's in the principal amount of $2,500,000, which shall bear interest at the rate of 10% per annum, payable on August 1 and February 1 in each year, beginning August 1, 1988; and

WHEREAS, Contel's outstanding indebtedness for borrowed money evidenced by promissory notes and payable more than 12 months after the date thereof are as follows:

Merrimack County Savings Bank, unpaid principal amount as of September 30, 1987, $346,500; GTE Automatic Electric, Incorporated, unpaid principal amount as of September 30, 1987, $557,500; Union Mutual Stock Life Insurance Co. of America and to Union Mutual Life Insurance Company, unpaid principal amount as of September 30, 1987, $560,000; Union Mutual Stock Life Insurance Co. of America and to Shenandoah Life Insurance Company, unpaid principal amount as of September 30, 1987, $680,000; Union Mutual Life Insurance Company, unpaid principal amount as of September 30, 1987, $1,000,000; and further outstanding indebtedness as of December 21, 1987 evidenced by promissory notes on demand or not more than 12 months after the date thereof is $900,000; and

WHEREAS, Contel's outstanding capital stock consists of 21,910 shares of common stock without par value, 26,800 shares of which stock are authorized; and

WHEREAS, Contel's purpose in issuing this $2.5 million note is to apply the proceeds of the issuance and sale to reduce the short-term indebtedness at the time of the issuance and sale of said note for borrowed money used for telephone plant construction and to fund other general cash flow requirements, and to repay the 12% Promissory Note, due March 1, 1988; and

WHEREAS, Contel requested a prompt hearing or expedited investigation pursuant to RSA 369:4 in light of it's need to refinance on and as of March 1, 1988 the 12% Promissory Note; and

WHEREAS, The New Hampshire Public Utilities Commission believes that it is consistent with the public good to approve Contel's application; it is

ORDERED, that all persons interested in responding to this petition be notified that they may submit their comments or file a written request for hearing on the matter before this commission no later than January 27, 1988.

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 January 20, 1988, and documented in an affidavit to be made on a

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copy of this order and filed with this office on or before February 2, 1988; and it is

FURTHER ORDERED, *NISI*, that Continental Telephone Company of New Hampshire, Inc. (Contel) ("Contel of New Hampshire, Inc.") is hereby authorized, pursuant to RSA 369:1 to issue and sell to Nationwide Life Insurance Company, the 10% Promissory Note, due February 1, 1998, the proceeds of which will be used to reduce the short-term indebtedness for borrowed money used for telephone plant construction and to fund other general cash flow requirements, and to repay the 12% Promissory Note, due March 1, 1988 in the principal amount of $1,000,000; and it is

FURTHER ORDERED, that Contel shall provide notice to this commission of the final Note Agreement and related loan documents; and it is

FURTHER ORDERED, that Contel 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 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 20 days from the date of this order unless the commission provides otherwise in a supplemental order issued prior to the effective date.

By order of the Public Utilities Commission of New Hampshire this thirteenth day of January, 1988.

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NH.PUC*01/13/88*[51921]*73 NH PUC 20*Town of Wolfeboro — Municipal Electric Department

[Go to End of 51921]

73 NH PUC 20

Re Town of Wolfeboro — Municipal Electric Department

DR 88-3
Order No. 18,973

New Hampshire Public Utilities Commission

January 13, 1988

ORDER authorizing an increase in the purchased power adjustment clause rate of a municipal electric utility.

AUTOMATIC ADJUSTMENT CLAUSES, § 13 — Energy cost clauses — Purchased power — Overcollected wholesale costs — Municipal electric utility.

[N.H.] A municipal electric utility's purchased power cost adjustment rate was revised to reflect a reduction in wholesale rates for power purchased from its principal supplier and the refund of overcollected purchased power costs as determined by the Federal Energy Regulatory Commission.

By the COMMISSION:

ORDER

WHEREAS, the Municipal Electric Department of the Town of Wolfeboro received a refund from Public Service Company of New Hampshire, its principal supplier of electricity; and

WHEREAS, said refund of $11,644.76 results from a settlement agreement approved by the Federal Energy Regulatory Commission in its docket No. ER 87-277-01; and

WHEREAS, on November 20, 1987 the Municipal Electric Department of the

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Town of Wolfeboro filed Original Page 11D of its tariff NHPUC No. 6 — Electricity, itemizing the total amount to be refunded through its monthly fuel adjustment clause; and

WHEREAS, the Municipal Electric Department of Wolfeboro on November 20, 1987 filed a revised Purchase Power Cost Adjustment (PPCA) page reflecting the reduction in wholesale rates from Public Service Corporation of New Hampshire; and

WHEREAS, the Commission finds the reduced PPCA rate and the refund of overcollected purchase power cost is just and reasonable and in the public good; it is therefore

ORDERED, that the Municipal Electric Department of the Town of Wolfeboro's Original Page 11D of its tariff NHPUC No. 6 — Electricity, be, and hereby is, accepted effective January 1, 1988; and it is

FURTHER ORDERED, that the Municipal Electric Department of the Town of Wolfeboro's 1st revised Page 11C-1 of its tariff NHPUC No. 6 — Electricity, providing for a PPCA rate of $1.23 per 100 kwh, reduced from the original PPCA rate of $1.27 per 100 kwh, be, and hereby is, accepted effective December 1, 1987.

By order of the Public Utilities Commission of New Hampshire this thirteenth day of January, 1988.

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NH.PUC*01/13/88*[51922]*73 NH PUC 21*Town of Durham — Water Department

[Go to End of 51922]

73 NH PUC 21

Re Town of Durham — Water Department

DE 87-262
Order No. 18,974

New Hampshire Public Utilities Commission

January 13, 1988

ORDER granting exemption from public utility status for provision of water service.

PUBLIC UTILITIES, § 121 — Water — Municipal system — Service beyond corporate limits

— Exemption from public utility status.

[N.H.] A municipal water system was granted an exemption from public utility status for service to be provided to one customer outside corporate limits where the entire system contained fewer than ten customers.

By the COMMISSION:

ORDER

WHEREAS, the Town of Durham which operates a central water system furnishing water in the Town of Durham, New Hampshire, by a petition filed December 18, 1987; seeks exemption from the provisions of RSA 362:4, for service to be provided to one customer in the Town of Lee, New Hampshire; and

WHEREAS, RSA 362:2 provides *inter alia*, that, unless exempted, municipal corporations providing water service outside their corporate limits are public utilities; and

WHEREAS, RSA 362:4 provides, *inter alia*, that if the whole of such water system supplies fewer than 10 customers, the commission may grant exemption from the

provisions of these statutes; and

WHEREAS, after investigation and consideration, this commission is satisfied that the granting of exemption here sought will be for the public good; it is

ORDERED, that exemption from public utility status be, and hereby is, granted to the Town of Durham, to supply water service to up to nine customers in the Town of Lee; and it is

FURTHER ORDERED, that the Town of Durham, shall notify this Commission if at some future time it shall expand its water system in Lee to service ten or more customers.

By order of the Public Utilities Commission of New Hampshire this thirteenth day of January, 1988.

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NH.PUC*01/18/88*[51923]*73 NH PUC 22*City of Dover — Water Department

[Go to End of 51923]

73 NH PUC 22

Re City of Dover — Water Department

DE 87-227
Order No. 18,976

New Hampshire Public Utilities Commission

January 18, 1988

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

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

[N.H.] A municipally owned water utility was allowed to extend mains and service in another municipality where no other water utility had franchise rights in the area sought and the municipality had no objection.

By the COMMISSION:

ORDER

WHEREAS, the City of Dover — Water Department, a water public utility operating under the jurisdiction of this Commission in areas served outside the City of Dover, by a petition filed December 28, 1987, seeks authority under RSA 374:22 and 26 as amended, to further extend its mains and service in the Town of Rollinsford; and

WHEREAS, no other water utility has franchise rights in the area sought, and the Petitioner submits that the area will be served under its regularly filed tariff; and

WHEREAS, the Salmon Falls Village Water District, Town of Rollinsford, N.H., has stated that it has no objection to the authority here sought by the City of Dover; 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 a written request for a hearing in this matter no later than February 2, 1988; and it is

FURTHER ORDERED, that the City of Dover, 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 26, 1988, and designated in an affidavit to be made on a copy of this Order and filed with this office on or before February 8, 1988; and it is

FURTHER ORDERED, *NISI*, that the City of Dover — Water Department be authorized pursuant to RSA 374:22, to extend its mains and service in the Town of Rollinsford in an area herein described,

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and as shown on a map on file in the Commission offices:

Beginning at a point at the northerly corner of the intersection of Oak Street and

Route 4. Said point being the property boundary between the above streets and Catalfo, and located in Dover, New Hampshire. Thence N 46-11-15 W a distance of 173.76´ along the northeasterly R.O.W. of Oak Street to a point. Thence N 47-51-25 W a distance of 200.00´ along the northeasterly R.O.W. of Oak Street to a point said point being located in Rollinsford, New Hampshire. Thence N 47-03-35 E a distance of 430.00´ adjacent to the Catalfo property to a point. Thence S 57-29-35 E a distance of 338.36´ adjacent to the Catalfo property to a point. Thence S 27-51-45 W a distance of 161.86´ adjacent to the Ayer property to a point. Thence S 31-52-15 W a distance of 51.24´ adjacent to the Ayer property to a point. Thence S 19-44-30 E a distance of 77.66´ adjacent to the Ayer property to a point. Thence S 66-43-05 W a distance of 275.23´ adjacent to the R.O.W. of Route 4 to the point of beginning; and it is

FURTHER ORDERED, that such authority shall be effective on February 8, 1988 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 eighteenth day of January, 1988.

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NH.PUC*01/18/88*[51924]*73 NH PUC 23*New England Telephone and Telegraph Company

[Go to End of 51924]

73 NH PUC 23

Re New England Telephone and Telegraph Company

DR 85-182
Order No. 18,977

New Hampshire Public Utilities Commission

January 18, 1988

ORDER approving agreement in telephone rate case concerning cost of service methodologies.

RATES, § 143 — Factors affecting reasonableness — Cost of service studies — Local telephone utility.

[N.H.] The parties to a local telephone rate proceeding agreed that the utility would perform the following cost of service studies: (1) analysis of combined interstate and intrastate costs (prior to Federal Communications Commission separations process) using the “Cost of Service Study” (COSS) method proposed by the utility; (2) COSS analysis beginning with separated intrastate costs; (3) analysis of combined costs using the “National Regulatory Research Institute Peak Responsibility Cost of Service” (NRRI) method; (4) NRRI analysis of separated costs; (5) COSS analysis of intrastate results using a cost matrix based on the utility's current tariff structure; and (6) a marginal cost study using the utility's “Incremental Cost Study” method.

PARTIES: New England Telephone and Telegraph Company (NET), the Consumer Advocate, Volunteers Organized In Community Education (V.O.I.C.E.), the Department of Defense (DOD), Comm-Tech Pay Services, Roger Aveni, Kearsarge Telephone Company (Kearsarge), Merrimack County Telephone Company (Merrimack), Wilton Telephone Company (Wilton), Granite State Telephone, Inc. (Granite

State), Union Telephone Company (Union), Continental Telephone Company of New Hampshire (Contel), and the Staff of the New Hampshire Public Utilities Commission.

By the COMMISSION:

REPORT ON THE PARTIES' REPORT TO THE COMMISSION

On November 2, 1987 the parties to this proceeding filed a "Report to the Commission" that conveyed a summary of the parties' negotiations and the agreement of the parties on the cost of service studies to be performed. This report and order sets forth the procedural history of the case and provides findings of fact and analysis. It allows the company to begin the cost studies contained in the agreement.

I. *Procedural History*

This docket was opened by order no. 17,639 (June 3, 1985) in *Re New England Teleph. & Teleg. Co.*, Docket No. DR 84-95 (70 NH PUC 496) for the purpose of investigating the rate structure of New England Telephone. An Order of Notice was issued on September 20, 1985 which scheduled a prehearing conference for October 23, 1985. At the prehearing conference the commission heard argument on the issues of intervention, scope, and procedural schedule. The commission granted all outstanding motions to intervene from the bench. We granted all late-filed motions to intervene in report and order no. 18,048 (January 9, 1986) (71 NH PUC 61), but required the "independent" telephone companies (the companies not affiliated with NET) to coordinate their positions, and to the extent possible, consolidate their participation pursuant to RSA § 541-A:17 IV. We also allowed the State of New Hampshire House Science and Technology Committee to participate as an observer in the negotiation sessions. Concerning the procedural schedule and scope, we allowed the parties to establish the negotiation schedule and to make recommendations concerning the scope of the proceeding.

On November 2, 1987 the staff, on behalf of the parties, filed a "Report to the Commission" and "Negotiations/Summary" with attachments A, B, and C. The negotiations/summary chronicled the negotiation meetings of the parties and the agreements reached therein. The negotiations/summary stated the parties agreement on the basic question to be answered in this proceeding: "What are New England Telephone's costs of providing service?" The report stated the agreement of the parties regarding the cost of service studies to be performed and outlined a proposed schedule for carrying out these studies. Attachment B is a position paper submitted by V.O.I.C.E. and Attachment C is a position paper submitted by Granite State, Kearsarge,

Merrimack, Union, and Wilton. NET's position and the staff's position are set forth in Attachment I. The other parties have not submitted position papers; however, according to the report this does not represent a lack of position with respect to the issues. The report states that a party's concurrence with the report "does not constitute an endorsement of the proposed study approaches or results."

II. *Positions of the Parties*

The parties signed a report to the commission that outlined an agreement that certain cost of service studies would be performed. This report specifically reserved the rights of the parties to

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advocate their positions with respect to the studies used and the results thereof.

Positions of the parties which have not been agreed to will not be set forth in this report. While we have noted the existence of these arguments we will save the discussion of them until such time as parties have either reached an agreement on the issues relevant to these positions or have had an opportunity for a hearing with respect to them.

The remainder of this section consists of the facts set forth in the submitted report.

The parties have agreed that New England Telephone should carry out four retrospective cost studies. Two studies will use the methodology proposed by NET (The "Cost of Service Study" or "COSS" method). One COSS will begin by analyzing the combined interstate and intrastate costs (i.e. the costs before the Federal Communications Commission's cost separations are performed). The second COSS will begin with the separated intrastate costs. The two remaining retrospective studies will utilize the "National Regulatory Research Institute Peak Responsibility Cost of Service" or "NRRI" method. One study will be conducted using separated costs and a second will be performed using combined costs.

NET will also carry out a special analysis of the COSS intrastate results as requested by V.O.I.C.E. This analysis restates the results using a cost matrix that resembles NET's current tariff structure.

NET and some of the Independents are collecting usage data to facilitate the studies. Six months of collection will be completed by December 31, 1987. NET estimates that the cost studies will be completed three months after the usage study is finished.

NET intends to conduct a combined marginal cost study using its "Incremental Cost Study." This method is similar to that used in NET's study for the Massachusetts Department of Public Utilities. The parties are continuing to negotiate to develop an additional marginal cost study.

The parties have agreed to meet following execution of the cost studies to review the results, narrow the issues, and negotiate possible settlements. Reports, direct testimony or both will then be filed.

III. *Commission Analysis*

It is apparent from the documentation contained in this report that the parties have conducted exhaustive negotiations concerning the most appropriate cost of service methodologies to be performed. They have agreed to perform many different studies that will produce much

information that will enhance the regulatory process. Therefore, we will accept the report and approve the procedure outlined therein.

By this order, we reserve the rights of the parties. We do not make any findings concerning the appropriateness of the methodologies or the results for ratemaking purposes.

Our order will issue accordingly.

ORDER

Upon consideration of the foregoing REPORT ON THE PARTIES' REPORT TO THE COMMISSION, which is made a part hereof, it is hereby

ORDERED, that the “Report to the Commission” filed by the parties on November 2, 1987 is accepted and the procedure outlined therein is approved.

By order of the Public Utilities Commission of New Hampshire this eighteenth day of January, 1988.

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NH.PUC*01/20/88*[51925]*73 NH PUC 26*Contel — New Hampshire

[Go to End of 51925]

73 NH PUC 26

Re Contel — New Hampshire

DE 88-005
Order No. 18,979

New Hampshire Public Utilities Commission

January 20, 1988

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, where the commission found that the change was the most cost effective way to provide service to a customer and was in the best interest of existing and future subscribers.

By the COMMISSION:

ORDER

WHEREAS, on January 5, 1988, Contel-New Hampshire filed with this Commission a proposal seeking change to its boundary between the Henniker and Hillsboro exchanges; and

WHEREAS, said change was initiated to provide telephone service to a Henniker resident

from the Hillsboro exchange; and

WHEREAS, the Commission finds said proposal the most cost-effective manner in which Contel-NH can serve this customer; and

WHEREAS, such revision in the best interest of existing and future subscribers in the affected area; it is

ORDERED, the Contel-NH file with the Commission its Fourth Revised Sheet 1 of Section 8, Contel-NH tariff No. 11, said revision to reflect the new boundary and to bear the name and title of the issuer and an issue date of January 5, 1988 and become effective 30 days hence.

By order of the Public Utilities Commission of New Hampshire this twentieth day of January, 1988.

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NH.PUC*01/20/88*[51926]*73 NH PUC 26*Woodland Pond Water Company, Inc.

[Go to End of 51926]

73 NH PUC 26

Re Woodland Pond Water Company, Inc.

DE 87-211
Order No. 18,980

New Hampshire Public Utilities Commission

January 20, 1988

PETITION to establish a water utility; granted.

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1. CERTIFICATES, § 125 — Water — Authority to act as a public utility.

[N.H.] The commission granted a petition for authority to establish a water utility where the company agreed that it would obtain ownership of the land on which the system water supply was located. p. 27.

2. RATES, § 595 — Water — Customer base — Projections.

[N.H.] Rates for a newly established water utility were calculated based on the number of expected customers rather than actual number of customers eliminating the concern that current customers would pay for unused capacity. p. 27.

APPEARANCES: Stephen Noury and Peter Lewis for Woodland Pond Water Company, Inc., James L. Lenihan, Robert

B. Lessels and Daniel D. Lanning for the commission staff.

By the COMMISSION:

REPORT

[1, 2] On October 30, 1987 Woodland Pond Water Company, Inc. (Woodland Pond or the company) filed a petition for authority to establish a water utility in a limited area in the town of Hampstead, New Hampshire and to set permanent rates for service pursuant to RSA 378:27 and 378:28 respectively.

The commission issued an order of notice on November 13, 1987 scheduling a prehearing conference for January 12, 1988. The prehearing conference was held as scheduled. No motions for interventions were made. The parties moved that a hearing on the merits of the petition be held in lieu of the scheduled prehearing conference.

During said hearing the company presented one witness to support its filing. The witness indicated that the company and staff had agreed that commission permission to allow Woodland Pond to provide service in the proposed service area is in the public good pursuant to RSA 374:22 I., and RSA 374:26 except that the staff argued that the land on which this system's water supply is located should be owned or controlled by Woodland Pond. The company has stated that the owners of the deeded well lot would transfer the lot to the utility.

The witness for the company stated that the installation of the water system is now complete, but only half (53) of the 103 customers are presently being served in the Woodland Pond development. However, the proposed rates were calculated based on the 103 customers which are expected to be connected to the system by the summer of 1988. This eliminates the concern that current customers are paying for unused capacity. The company and the staff stipulated that the proposed rates are just and reasonable.

Based on the evidence provided we find this petition to establish a water utility in a limited area in the Town of Hampstead, New Hampshire is in the public good pursuant to RSA 374:22. We further find the proposed rates as contained in the tariff of Woodland Pond Water Company, Inc. NHPUC No. 1 — Water, are just and reasonable pursuant to RSA 378:27 and 28 and should be approved as permanent rates.

Our Order will issue accordingly.

ORDER

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

ORDERED, that Woodland Pond Water Company, Inc., be and hereby is, authorized to operate as a public water utility in a limited area in the Town of Hampstead as described and shown on a map filed in this docket; and it is

FURTHER ORDERED, that Woodland Pond Water Company, Inc., shall file a tariff describing the terms and conditions of the water service provided and the rates for such service at $7.17 per quarter minimum charge and $1.99 per 100 cubic feet for all consumption; and it is

FURTHER ORDERED, that such tariff shall have its title page signed by the issuing company officer and bearing the notation: "Authorized by NHPUC Order No. 18,980 in case no. DE 87-211, dated January 20, 1988".; and it is

FURTHER ORDERED, that the tariff shall bear the effective date of this Order.

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By order of the Public Utilities Commission of New Hampshire this twentieth day of January, 1988.

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NH.PUC*01/22/88*[51927]*73 NH PUC 28*West Epping Water Company

[Go to End of 51927]

73 NH PUC 28

Re West Epping Water Company

DE 87-93, DE 87-248
Order No. 18,983

New Hampshire Public Utilities Commission

January 22, 1988

ORDER setting hearing on outstanding petitions by a water company.

PROCEDURE, § 20 — Hearing and notice — Failure of petitioning party to appear.

[N.H.] A water company that had failed to appear at a scheduled hearing was required to inform the commission in writing if it could not appear at a hearing concerning its petitions to provide water service to a limited area and for exemption from regulations; the commission added that if the company failed to appear again it would consider what action should be taken to protect the customers.

APPEARANCES: Charles H. Morang, Esq. on behalf of the Town of Epping Water and Sewer Commission, and Mary Hain, Esq. and Robert Lessels on behalf of the Staff of the New Hampshire Public Utilities Commission.

By the COMMISSION:

REPORT

I. *Procedural History*

On May 15, 1987, West Epping Water Company filed a petition for authority to establish a

public utility to provide water service in a limited area in the town of Epping, in the area known as West Epping. By order of notice dated July 16, 1987, the commission opened docket no. DE 87-93 to investigate the petition and ordered that a prehearing conference be held on July 23, 1987. On July 20, 1987, the Town of West Epping Water and Sewer Commission filed a motion to intervene. At the July 23, 1987 prehearing conference the parties stipulated to a procedural schedule. By order no. 18,784, dated August 5, 1987 the commission approved the procedural schedule and granted the Town of Epping Water and Sewer Commission's motion for intervention.

On December 1, 1987 West Epping Water Company filed a petition for exemption from regulation pursuant to RSA 362:4. By order of notice dated December 7, 1987, the commission closed docket DE 87-93 and opened docket DE 87-248 for the purpose of investigating the petition for exemption. The order of notice set a hearing date on January 13, 1988 to consider the petition.

The petitioner did not appear on January 13, 1988. At the hearing the town of Epping Water and Sewer Commission requested that this commission consider it to be an interested party in docket DE 87-248 and moved that the commission continue the hearing. The commission granted the intervention of The Epping Water and Sewer Commission from the bench.

II. *Consolidation of DE 87-93 and DE 87-248*

The commission decided from the bench to reopen Docket DE 87-93, to consolidate Docket DE 87-93 with Docket DE 87-248,

and to continue the proceeding. We also allowed the Town of Epping Water and Sewer Commission to intervene in this combined proceeding. A hearing on the merits of the two petitions will be held on April 14, 1988 at 10:00 a.m.

The petitioner, West Epping Water Company will contact us in writing by March 1, 1988 if it cannot appear on April 14, 1988 for a hearing on the two petitions. If the applicant does not appear at the future hearing on this matter the commission will consider what action should be taken to protect the customers.

Our order will issue accordingly.

ORDER

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

ORDERED, that the petitioner in the captioned dockets shall appear on April 14, 1988 for a hearing on the merits of its two outstanding petitions.

By order of the Public Utilities Commission of New Hampshire this twenty-second day of January, 1988.

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73 NH PUC 29

Re Detariffing Telephone Utilities' Inside Wire

DE 86-154
Order No. 18,984

New Hampshire Public Utilities Commission

January 27, 1988

ORDER denying motion for reconsideration of decision to require all telephone companies to relinquish ownership of expensed inside wire.

VALUATION, § 240 — Customer owned property — Telephone inside wire — Feature of Investment Tax Credit.

[N.H.] An order requiring all telephone companies to relinquish ownership of expensed inside wire was upheld where, using an expensing mechanism for rate-making purposes, the petitioning utility had fully recovered its investment in inside wire and had earned the benefit of the equivalent of a tax-free loan by using the Investment Tax Credit to offset tax liability even though early disposition of the expensed inside wire would subject the utility to a partial recapture of the credit under federal tax rules.

By the COMMISSION:

ORDER

ORDER ON MOTION FOR RECONSIDERATION

On January 8, 1987 Continental Telephone Company of New Hampshire, Inc. (“Contel”) filed a Motion for Reconsideration and Other Relief of Report and Order No. 18,514 (December 19, 1986) (71 NH PUC 801) as, revised on December 30, 1986 in the captioned proceeding.

WHEREAS, the motion seeks reconsideration with respect to that part of the Report and Order requiring all telephone companies to relinquish ownership of expensed inside wire effective not later than January 1, 1987; and

WHEREAS, the Movant alleges that the Commission's Order was based on the mistaken assumption that expensed inside wire is of no further value to the telephone companies; and

WHEREAS, Contel further avers that the expensed inside wire is still of clear economic value since Contel did not expense this investment but capitalized it for tax purposes, claiming investment tax

credits pursuant to I.R.C. §§38 and 46 (1987) and that the early disposition of the expensed inside wire would subject Contel to recapture of the investment tax credit pursuant to I.R.C. §47 (1987); and

WHEREAS, utilizing the expensing mechanism for ratemaking purposes, the company fully recovered its investment in inside wire, therefore, in compliance with N.H. Rev. Stat. Ann. §378:28 (1984), its rates were ". . . sufficient to yield not less than a reasonable return on the cost of property used and useful in the public service, less accrued depreciation. . ." and also Contel earned the benefit of the equivalent of a tax-free loan by being able to use the investment tax credit to offset tax liability and since recapture is only a percentage of the original credit claimed, to wit:

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

If the recovery property ceases to be eligible for the investment tax credit within:	*The recapture percentage for utility property is:*
First Full year after placed in service	*100*
Second full year	*80*
Third full year	*60*
Fourth full year	*40*
Fifth full year	*20*
After fifth full year	*0*

1 *Federal Tax Guide*, ¶ 775, p. 421 (1987); it is hereby

ORDERED, that Contel's Motion for Reconsideration and Other Relief be, and hereby is, denied.

By order of the Public Utilities Commission of New Hampshire this twenty-seventh day of January, 1988.

*Commissioner Bisson did not participate in this decision as original order pre-dated her appointment.

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NH.PUC*01/28/88*[51929]*73 NH PUC 30*Lorri Wilkins v. Claremont Gas Light Company

[Go to End of 51929]

73 NH PUC 30

Lorri Wilkins
v.
Claremont Gas Light Company

DC 87-196
Order No. 18,986

New Hampshire Public Utilities Commission

January 28, 1988

ORDER scheduling hearing concerning improper termination of natural gas service.

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1. PROCEDURE, § 6 — Proceedings to enforce law — Customer complaints.

[N.H.] New Hampshire law, RSA § 365, provides that any person may complain to the commission concerning any public utility's violation of law, tariff, or commission order; if the charges made in the complaint are not satisfied by the utility, the commission must investigate the charges and, after notice and hearing, take whatever action is justified by the facts. p. 32.

2. PAYMENT, § 51 — Denial of service — Notice of intent to discontinue — Natural gas utility.

[N.H.] Where a gas utility had terminated service to a residential apartment in violation of the notice requirements of the New Hampshire Administrative Code PUC § 503.09(1), and had not corrected the violation by reactivating service and issuing proper notice, the commission scheduled a hearing and directed the parties to present evidence concerning (1) the authority of the commission to grant declaratory and injunctive relief, (2) the authority of the commission to fine utilities, and (3) the authority of the commission to award damages, the appropriate level of damages, and the fine to be assessed. p. 32.

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By the COMMISSION:

REPORT ON REQUEST FOR
FINDINGS OF FACT AND
RULINGS

This report concerns a complaint by Ms. Lorri Wilkins of 166 North Street/33 Fremont Street, Claremont, New Hampshire (a residential tenant of a Claremont Gas Light Company customer) against Claremont Gas Light Company for discontinuing gas service. The report details the procedural history of the case and provides findings of fact concerning uncontested issues. It sets a hearing to address outstanding issues of fact and the complainant's proposed rulings.

I. *Procedural History*

This docket was opened by the filing of a complaint by Lorri Wilkins against Claremont Gas Light Company (Claremont) on October 19, 1987 pursuant to RSA § 365:1 et seq. The complaint was for the discontinuance of gas service to a residential tenant of a Claremont customer in derogation of the notice requirements of N.H. Admin. Code Puc § 503.09(1). It prayed for declaratory and injunctive relief and penalties for the violation.

On October 30, 1987 we issued order no. 18,888. The order required Claremont to answer the allegations contained in the complaint, stating defenses to each claim and admitting or denying the allegations pursuant to RSA § 365:2. On November 16, 1987 Claremont filed its answer. On December 16, 1987 Lorri Wilkins filed a request for findings of fact and rulings.

II. *Positions of the Parties*

The complainant argues that Claremont terminated gas service to 166 North Street/33 Fremont Street without notice to the residential tenants in violation of RSA § 374:1, RSA § 363-B:1 and N.H. Admin. Code Puc § 503.09(1). She avers that such action was taken with knowledge that the building was occupied by residential tenants. She alleges that the applicable notice requirements were not met even after a request for compliance by the commission's consumer assistant.

In her complaint Ms. Wilkins requested that the commission order Claremont to provide written notice of proposed termination in compliance with N.H. Admin. Code Puc § 503.09(1). The complaint further prayed that the commission fine Claremont in accordance with RSA § 365:1 et seq. for its violation of the notice provisions of RSA § 374:1 and RSA § 363-B:1 and N.H. Admin. Code § 503.09(1). The complainant also asked for damages in the amount of $200.00 for the financial and emotional damages incurred due to the wrongful termination of gas service to her cooking stove for forty-eight (48) hours.

In her request for findings of fact and rulings, the complainant requested additional relief. She asked the commission to rule that in this case Claremont did not provide any written notice prior to the October 7, 1987 termination in derogation of § 503.09(1) and that Claremont did not provide all of the information required under § 503.09(1) in the notice delivered on October 9, 1987 stating the company's intent to disconnect service on October 19, 1987. Ms. Wilkins requested that the commission order Claremont to provide the information required under 503.09(1) to tenants of a building for which shutoff has been requested by the customer.

III. *Facts*

In Ms. Wilkins complaint certain facts were alleged. The facts that were not denied by Claremont in its answer are listed below. They will be assumed as findings of fact in this proceeding unless proven otherwise.

The building in which complainant rents her apartment has been owned by at least two landlords since the inception of Wilkins' tenancy, approximately two years ago. The landlords who have owned 166 North Street/33 Fremont Street are commonly known in the Claremont area to be the owners of a large number of rental apartments. Claremont is currently in litigation against the current owner of the apartment building at issue and is familiar with the owner's business as landlord. Claremont had notice that the apartment building contained at least nine rental apartments when gas service to the building was terminated on October 7, 1987.

Complainant's rent included gas service supplied by the owner of her apartment building, until October 7, 1987. On October 7, 1987, gas service to complainant's apartment and all but one of the neighboring apartments at 166 North Street/33 Fremont Street was terminated without

prior notice from defendant or the owner of the building.

On October 8, 1987, Claremont was notified of N.H. Admin. Code Puc § 503.09(1) requiring at least 10 days actual written notice to residential tenants prior to the proposed date of termination. On October 9, 1987, defendant returned gas service to 166 North Street/33 Fremont Street after a telephone call from the commission's consumer assistant, and agreed to provide 10 days notice prior to termination of gas service.

On October 9, 1987, complainant was served with a written notice by Claremont that failed to comply with the information requirements of N.H. Admin. Code Puc § 503.09(1). The notice did not include a recommendation that the tenant immediately contact the landlord, the reason for the termination, the telephone number at which the tenant may contact the utility, the procedure by which the tenant may question or contest termination, and the NHPUC toll-free consumer assistance phone number (Exhibit 1).

Fact number 8 of Wilkins' complaint is a contested fact. The complainant argues that Claremont refused to reconnect gas service on October 8, 1987. The answer avers that in a conversation with Ms. Wilkins' representative on October 8, 1987, the company agreed to "abide by whatever was agreed to between" the commission's consumer assistant and the representative.

Claremont admitted in its answer that it turned the meters on again on October 9, 1987 and hand delivered notices to the tenants which stated the address of the tenant, the name and address of the utility, and the following

> according to the Public Utilities Commission we are required to extend the turning off of the gas meter which furnishes gas to your cooking range until October 19, 1987. If arrangements are not made by you to become a customer by that date the gas meter will again be turned off.

IV. *Commission Analysis*

[1, 2] New Hampshire law provides that a person may complain to the commission concerning any public utility's violation of law, tariff, or commission order. RSA § 365:1. If the public utility makes reparation for the injury or ceases to violate these requirements, the commission need not take further action upon the charges.

RSA § 365:3. If the charges are not so satisfied, the commission must investigate the charges and, after notice and hearing, take whatever action is justified by the facts that it has the power to take. RSA § 356:3.

In her original complaint the complainant asked for several forms of relief. First, she requested that the commission order Claremont to give written notice of proposed terminations under N.H. Admin. Code Puc § 503.09(1). Written notice was given on October 7, 1987. However, this notice was not given in conformance with § 503.09(1) because certain required information (as discussed under the findings of fact portion of this order) was omitted. Since the company has not corrected this action by reactivating service and issuing a notice that complies with the commission's rules, the commission must hold a hearing under RSA § 365:4.

The complainant has also prayed for fines and damages. The parties shall be required to provide all evidence and arguments (with factual evidence to be filed three days before the date of the hearing in the form of sworn affidavits) concerning: the authority of the commission to grant declaratory and injunctive relief, the authority of the commission to fine utilities, the authority of the commission to award damages under these circumstances, the level of damages, and the fine to be assessed. The parties shall provide all evidence concerning the disputed fact mentioned in the findings of fact portion of this report and all evidence supporting any other ruling requested in this proceeding.

Our order will issue accordingly.

ORDER

Upon consideration of the foregoing Report On Request For Findings of Fact and Rulings, which is made a part hereof, it is hereby

ORDERED, that a hearing will be held on Friday, February 19, 1988 at 10:00 A.M. to address the outstanding issues as delineated in the foregoing report.

By order of the Public Utilities Commission of New Hampshire this twenty-eighth day of January, 1988.

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NH.PUC*01/29/88*[51930]*73 NH PUC 33*Northeast Hydro-Development Corporation

[Go to End of 51930]

73 NH PUC 33

Re Northeast Hydro-Development Corporation

DR 85-176
Order No. 18,988

Re Beaver Brook Hydro Corporation

DR 85-188
Order No. 18,988

New Hampshire Public Utilities Commission

January 29, 1988

ORDER rescinding approvals of the long-term rate petitions of two hydroelectric power developers.

COGENERATION, § 24 — Small power production projects — Hydroelectric power — Long-term rate petitions — Rescission of rate orders.

[N.H.] Orders approving long-term rate petitions associated with two hydroelectric power

projects were rescinded where the commission had been informed by the project developers that the projects had been abandoned.

By the COMMISSION:

ORDER

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WHEREAS, on May 28, 1985 Northeast Hydro-development Corporation filed a long term rate petition for the Weare Reservoir Project (NHC-Weare); and

WHEREAS, on May 31, 1985 Beaver Brook Hydro Corporation (BBHC) filed a long term rate petition for the Beaver Brook project; and

WHEREAS, the commission approved the petitions by order *nisi* no. 17,810 (70 NH PUC 709) for NHC-Weare and no. 17,812 for BBHC on August 13, 1985; and

WHEREAS, the commission suspended orders no. 17,810 and no. 17,812 on September 16, 1985 (70 NH PUC 818) and reconfirmed its approval in supplemental order no. 17,896 on October 11, 1985 (70 NH PUC 843) following resolution of issues regarding insurance coverage and documentation establishing their representative as a duly authorized agent; and

WHEREAS, on January 14, 1988, NHC-Weare and BBHC, following inquiry by commission staff, informed the commission by letter that "Beaver Brook was abandoned due to difficulty in securing adequate land and flowage rights and Weare Reservoir was abandoned due to insurance problems relating to the high hazard potential of that structure in the event of its instantaneous breach"; it is therefore

ORDERED, that the approvals of the long term rate petitions for NHC-Weare and BBHC be, and hereby are, rescinded.

By order of the Public Utilities Commission of New Hampshire this twenty-ninth day of January, 1988.

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NH.PUC*01/29/88*[51931]*73 NH PUC 34*Uniform System of Accounts for Telecommunications Companies

[Go to End of 51931]

73 NH PUC 34

Re Uniform System of Accounts for Telecommunications Companies

DRM 87-233
Order No. 18,990

New Hampshire Public Utilities Commission

January 29, 1988

ORDER adopting Part Puc 409, *Uniform System of Accounts for Telecommunications Companies.*

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1. RULES AND REGULATIONS — State commission — Adoption of third party standards and codes.

[N.H.] Under the New Hampshire Administrative Procedures Act, the commission may not automatically adopt future amendments to standards or codes, such as the Federal Communications Commission's Uniform System of Accounts, that are promulgated by third parties; instead, if it wishes to adopt amendments to third party standards, the commission must institute a rulemaking procedure. p. 39.

2. ACCOUNTING, § 54 — Telephone — State-specific system of accounts.

[N.H.] Rather than adopting the Federal Communications Commission Uniform System of Accounts, the commission adopted a state-specific system of accounts for telecommunications companies; it was found that (1) the information needs of the state commission were more detailed than those of a remote federal agency, and (2) a state-specific accounting system would preserve the commission's independence in setting intrastate accounting and rate-making policy. p. 39.

3. ACCOUNTING, § 54 — Telephone — Uniform system of accounts.

[N.H.] Telecommunications utilities within

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the jurisdiction of the commission were directed to follow the newly adopted Part Puc 409, *Uniform System of Accounts for Telecommunications Companies.* p. 39.

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i. ACCOUNTING, § 1 — Generally — Regulated utilities — Generally accepted accounting principles.

[N.H.] Statement, by commission, that a strict “generally accepted accounting principles” approach is not appropriate for regulated utilities.
p. 39.

By the COMMISSION:

REPORT

I. *HISTORY*

In a Rulemaking Notice Form submitted to the Director of Legislative Services on December

11, 1987, we proposed to amend rules Puc 406.03 *Accounting Records*, thereby replacing Parts 31 and 33 of the FCC rules with a new Uniform System of Accounts as prescribed and issued by this Commission.

This proceeding to revise the USOA was a direct result of a *Federal Communications Commission* (FCC) *Report and Order* released on May 15, 1986. In (FCC 86-221) (CC Docket 78-196) the FCC rescinded and replaced Parts 31 and 33 of its rules with a single new uniform system of accounts entitled Part 32, Uniform System of Accounts for Telephone Companies (USOA).

II. *BACKGROUND*

The Commission's currently prescribed Uniform Systems of Account (USOA) for telephone corporations is designed to provide the information necessary for effective regulation of utilities under commission jurisdiction. This USOA was prescribed by the Federal Communications Commission in the Code of Federal Regulations, and adopted by this Commission in 1968. This system was adopted in order to provide a common base of financial data. The FCC Part 32, Uniform System of Accounts for Telephone Companies (USOA), effective January 1, 1988, replaces the system in effect over 50 years. The FCC revisions were extensive because of economic and technological changes in the industry structure and the introduction of competition and a variety of new services and products, rendering the existing USOA inadequate. This revised USOA explicitly recognized the potential for differences between FCC and state accounting and ratemaking policies. The FCC established two classes of carriers Class A companies with annual gross operating revenues of $100 million or more and Class B companies with annual gross operating revenues of less than $100 million. It was the consensus that State Commissions would likely adopt a portion or all of the new Part 32 USOA. State commissions were allowed to prescribe a threshold if less than $100 million and/or require more disaggregation of accounts for small telephone companies. The FCC would not supersede the imposition by the states of additional requirements for small companies. The FCC concluded that such an imposition of additional requirements by the states would not be unreasonable or unduly burdensome for small companies.

The NHPUC Staff attended several USOA Rewrite Information Seminars. These seminars provided an introduction

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of Part 32 USOA, with an overview of account structure, numbering system, balance sheet-presented in order of liquidity, Generally Accepted Accounting Procedures (GAAP) as pertaining to capitalized leases and full normalization of all tax timing differences.

An analysis of the FCC Part 32 USOA and the NHPUC accounting and ratemaking policies led to a conclusion that there are differences with the FCC approach in a number of areas, and that a state specific accounting system would preserve the state regulator's independence in setting accounting and ratemaking policy. In addition, under RSA 541-A, the Administrative Procedure Act, an agency cannot automatically adopt future amendments to a third party standard. A rulemaking must be filed to adopt any changes to the rules.

During the summer and fall of 1987 considerable work, research and analysis was expended

in formulating an accounting system that would meet the goals of the Commission. This was done primarily by the NHPUC finance department in conjunction with the New Hampshire Telephone Association, with input from members of the Union Telephone Co., Granite State Telephone Co., Merrimack County Telephone Co., Berry, Dunn, McNeil & Parker, C.P.A's. Other Commissions also were helpful in the process, specifically the following states: New York, North Carolina, Florida and California who prepared and submitted information and material at our request.

An initial draft of a proposed Uniform System of Accounts to be adopted by New Hampshire was prepared by the NHPUC staff, the account structure and format of the proposed USOA conforms closely to that of the new FCC Part 32 system. This conformity is essential in order to provide consistent and comparable financial data among telecommunications carriers.

In a Rulemaking Notice Form submitted to the Director of Legislative Services on December 11, 1987, we proposed to amend rules Puc 406.03 *Accounting Records*, thereby replacing Parts 31 and 33 of the FCC rules with a new Uniform System of Accounts as prescribed and issued by this Commission.

Under separate cover, the New Hampshire Telephone Association (NHTA) and other telephone utilities, were notified of this proposed rulemaking and provided with a document for review and comments. This document contained the account structure and instructions for a completely revised (USOA) for telephone companies under Commission jurisdiction.

A meeting was held between the PUC staff and the NHTA on December 22, 1987, to review and discuss fully the net effect of the proposed changes on the majority of carriers in the State. Identified areas of concern were minimal, with an exception and agreement regarding Capital leases, as discussed further.

Telephone Utilities were given until January 8, 1988 to submit written comments. Only two utilities, submitted position papers on the above. The parties were: AT&T Communications of New Hampshire, Inc. (AT&T-CNH) and Contel of New Hampshire, Inc. (Contel).

III. *POSITION OF THE PARTIES*

A. *AT&T Communications of New Hampshire, Inc. (AT&T-CNH)*

AT&T Communications of New Hampshire, Inc. (AT&T-CNH) states the following issues with the PUC's USOA proposal: (1) record Current Deferred Income Taxes - DR (proposed PUC Account 1360) as an asset; (2) require that

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full tax normalization be phased-in over a five-year period; (3) record transactions with affiliates in separate primary accounts; and (4) require Commission approval before capital lease accounting can be used.

AT&T-CNH states that the maintenance of the additional tax normalization accounts (Current Deferred Income Taxes - DR (proposed PUC account 1360) to be recorded as an asset, and current deferred operating income taxes - CR (proposed PUC account 4100); would require AT&T-CNH to establish new, burdensome and costly procedures to allow reclassification of

deferred taxes from the FCC prescribed Part 32 accounts to the proposed deferred tax accounts.

Staff's position is that the USOA will avoid burdensome record keeping for the small carrier which have limited capabilities to maintain detailed records of jurisdictional differences. Staff further believes these changes will simplify the conversion process considerably and still yield the information needed for regulatory purposes. Industry wide conformity in financial accounting and reporting is crucial to the industry because of the relationship of accounting data with the subsystems used to organize and analyze costs for use in regulation. NHPUC has primary jurisdiction over the New Hampshire independent companies. As such, we expect independent carriers to maintain their primary accounting records on the basis of the New Hampshire Uniform System of Accounts (USOA) for Telecommunications Companies.

AT&T-CNH also took exception to the proposal requiring that full tax normalization be phased-in over a five-year period. As recently granted to carriers under FCC jurisdiction AT&T-CNH has elected to adopt a flash-cut implementation of full tax normalization. They further stated that if allowed to use flash-cut for purposes of implementing its tax normalization, it could avoid the added costs of maintaining duplicate records which would be required under the PUC's proposal, and urged that the PUC authorize carriers the option to implement full tax normalization on a flash-cut basis.

The USOA that is promulgated in this rulemaking does not require that full tax normalization be phased-in over a five-year period. Our USOA states that full normalization “shall be phased-in as directed by this Commission.” This area is one of the reasons that this Commission is adopting its own chart of accounts. It is not our intention to have the FCC establish ratemaking policy for intrastate telephone companies. Therefore, the instructions related to comprehensive interperiod tax allocation are deliberately different from those proposed by the FCC. This Commission adopted normalization accounting for all of its utilities in 1970. In 1970 utilities were given the option of either full normalization or flow-through accounting. Therefore, the option could be taken by the utility. However, our adoption of the full normalization methodology did not anticipate that any utility which opted to continue flow through accounting would be later asking to be compensated for future unfunded tax liabilities. It is our policy to address that matter on a case by case basis. Therefore, the language which appears in the rulemaking will stand. AT&T-CNH is a relatively new company and our ruling should have little or no effect on its accounting. This Commission has adopted full normalization so the question of flash-cut or phase-in is moot as related to ATT-CNH.

AT&T-CNH also took exception to the

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proposed revision that would require the maintenance of separate primary accounts to record transactions with affiliates. AT&T-CNH stated that the detail to be recorded in the proposed general ledger accounts are already required and maintained under subsidiary records. therefore, a partial duplication of AT&T-CNH's general ledger accounts at greater expense and inconvenience.

PUC Staff's position is that the proposed separate, primary accounts with instructions expanded to record transactions with affiliates, would improve tracking of transactions, and

enhance auditing trails for charges from service affiliates that provide centralized shared cost services to operating telephone company affiliates. All transactions with affiliates would be cleared through the new primary accounts, before disposition to the expense, clearing revenue, or other accounts, this accounting would allow charges to and from affiliates to be identified by company, tracked to the ultimate regulated account of disposition, and provides an explanation of the transaction. We believe the segregation of affiliated transactions in primary accounts and the requirement to clear all gross charges and credits through these accounts, will provide the Commission with the capability to scrutinize transactions and improve ability to assess the effect of these activities on rates. This detail would be furnished in regular reports and would be readily available to the Commission.

AT&T-CNH further stated that the proposed changes to the USOA provide that a company may adopt capital lease accounting only if, for each financing arrangement, it obtains Commission approval to enter into a long term capital lease and demonstrates that capital lease accounting is not detrimental to ratepayers. In Part 32 of the FCC USOA, no requirement is needed for pre-approval of each long-term capital lease before a company may adopt capital lease accounting, it does require that all leases be accounted for in conformity with General Accepted Accounting Principles (GAAP).

The PUC staff in its objective to maintain close conformity with the FCC to the extent that NHPUC regulatory policies permit, and as a result of the position paper as submitted by the AT&T-CNH and a meeting held on December 22, 1987 with the New Hampshire Telephone Association (NHTA), is in agreement with the position of AT&T-CNH as presented regarding capital lease accounting, and would adopt the FCC's Rules and Regulations regarding the treatment of capital leases. The FCC adopted GAAP in accordance with FASB 13, “Accounting for Leases” FASB 13 recognizes two types of leases: operating leases and capital leases. If a lease meets certain conditions GAAP requires that the lease be classified as a capital lease, therefore a qualifying lease arrangement is recorded as a capital lease in accordance with SFAS #13. The FCC states that GAAP accounting for leases is proper and also emphasizes the absence of significant revenue requirement impact. Staff's concerns regarding ratepayer benefit of the lease will continue to be addressed as part of the rate-making process and examined in concert with other related financial considerations.

B. *Contel of New Hampshire, Inc.*

Contel of New Hampshire, Inc. responded to the Rulemaking Order by stating that it did not foresee any potential problems with implementing the revised Uniform System of Accounts (USOA) for Telecommunications Companies as issued by this Commission.

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Their only concern was in the potential effect of the Commission's requirement that the Finance Director be notified of its intention to follow a new accounting standard 150 days prior to the effective date of the change whereas the FCC required only a 90 day notification period. They further stated, that a PUC filing deadline which differs from the FCC's can only serve to increase the costs and administrative burdens placed upon the company by USOA implementation and the jurisdictional differences that may arise, and requested that the

Commission adopt the FCC 90 day notification period.

Staff's design of the extension of notification from 90 to 150 days of the carrier's intention to adopt any GAAP standards, was established in order to permit additional time for staff review, analysis and rulemaking. Upon review of the proposed instruction to be notified 150 days prior to the effective date of an accounting standard change, and a more detailed review of the intent of the FCC, staff is in agreement that adopting the FCC 90 day notification period would be consistent with the purpose of the USOA. However, it should be noted that timely notification is of the essence in order to comply with RSA 541-A, the Administrative Procedure Act; specifically Ls-A 402.06 *Adoption by Reference* of the New Hampshire Rulemaking Manual which states “The agency shall not automatically adopt future amendments to these standards or codes. If it wishes to incorporate such amendments, it shall do so by adopting the changes as rules, following the procedure required by RSA 541-A:3”.

IV. *COMMISSION ANALYSIS*

[1-3] The purpose of an accounting system is to accumulate accounting data from which the cost of service can be calculated. That data should reflect the economic realities of operations being tracked. Economic reality can be defined in differing terms from different viewpoints. Companies in an unregulated, competitive environment are subjected to risks and uncertainty from management decisions, production capabilities, competition, and changes in market forces. To a large extent, regulated utilities are shielded from these risks.

[i] Accounting rules and procedures for unregulated companies are prescribed by the Financial Accounting Standards Board (FASB) and are referred to as Generally Accepted Accounting Principles (GAAP). GAAP attempts to define economic reality in such a manner that it will protect investors. For example, costs are expensed in the earliest time period possible because of the risk that there will be no future benefit. An asset can lose future benefit for a variety of reasons such as changing market conditions, changing technology or obsolescence. Another concern is whether the company will be in business in future years. For unregulated, competitive companies, these are valid concerns.

Regulated utilities are faced with different conditions which suggest that a strict GAAP approach is not appropriate. For the majority of their operations, regulated utilities are not subject to competition. In addition, they are not faced with the possibility that they will not be reimbursed for the reasonable costs which are expended in the provision of service. The only question is how rates will be designed to recover the costs.

While it is essential for basic conformity to the FCC Uniform System of Accounts, NHPUC accounting and ratemaking policies differ from the FCC approach in a number of areas. The

information needs of the NHPUC are more detailed than those of the more remote federal agency. A state specific accounting system will preserve the Commission's independence in setting intrastate accounting and ratemaking policy.

Our review of the positions of the parties reveals that there is one (1) issue within the scope of the instant docket which require Commission response. This issue is specifically the

maintenance of the additional tax normalization accounts 1) to record Current Deferred Income Taxes - DR (proposed PUC Account 1360) as an asset, and current deferred operating income taxes - CR (proposed PUC account 4100).

Although the Commission finds that the maintenance of the additional tax normalization accounts would require reclassification of deferred taxes from the FCC prescribed Part 32 accounts to the proposed deferred tax accounts, we agree with staff's position that the USOA will avoid burdensome record keeping for the small carrier which have limited capabilities to maintain detailed records of jurisdictional differences. The Commission will approve the method of accounting presented by staff and would reiterate that industry wide conformity in financial accounting and reporting is crucial to the ratemaking process and therefore we would require independent carriers to maintain their primary accounting records on the basis of the Part Puc 409 *Uniform System of Accounts (USOA) for Telecommunications Companies.*

V. *CONCLUSION*

Based on the foregoing analysis we find that utilities within the jurisdiction of this Commission shall follow Part Puc 409 *Uniform System of Accounts for Telecommunications Companies* as revised and approved. The NHPUC staff's recommendations and positions set forth are for accounting purposes only. Because the nature of this proceeding does not allow the level of scrutiny normally employed in a rate proceeding, the Commission reserves the right to review any matter further should it become an issue in any rate making proceeding.

Our Order will issue accordingly.

ORDER

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

ORDERED, that the requirements of RSA 541-A, the Administrative Procedures Act, have been met and the proposed rules may now be adopted; it is

FURTHER ORDERED, that the proposed rules Puc Part 406.3 *Accounting Records* and Part 409 *Uniform System of Accounts for Telecommunications Companies* as set forth in the Final Proposal submitted on January 29, 1988 to the joint legislative committee on administrative rules be, and hereby are, adopted; and it is

FURTHER ORDERED, that in accordance with RSA 541-A:2, these rules shall be effective for a period not longer than six years; and it is

FURTHER ORDERED, that this docket is closed.

By order of the Public Utilities Commission of New Hampshire this twenty-ninth day of January, 1988.

FINAL PROPOSAL

Amend Puc 406.03, effective November 26, 1984, document #2912, by striking out said section and inserting in place thereof the following:

Puc 406.03 *Accounting Records*. Each telephone company under jurisdiction of this

commission, shall maintain its accounts and records in conformity with the Uniform System of Accounts for Telecommunications Companies as established and issued by this Commission pursuant to Part Puc 409.

Puc 409 *Uniform System of Accounts for Telecommunications Companies.*

note a: Pursuant to 541-A:5, II, the director of legislative services "may omit from the compilation any rule the publication of which would be unduly cumbersome, expensive, or otherwise inexpedient, if the rule in printed or processed form is made available on application to the adopting agency, ..."

note b: Pursuant to 541-A:5, II, the rule cited above is available for review in the administrative procedures division of the office of legislative services, and copies may be made available at the New Hampshire Public Utilities Commission and the New Hampshire State Library.

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NH.PUC*01/29/88*[51932]*73 NH PUC 41*Pennichuck Water Works

[Go to End of 51932]

73 NH PUC 41

Re Pennichuck Water Works

Additional petitioner: New Hampshire Department of Transportation

DE 87-39
Order No. 18,991

New Hampshire Public Utilities Commission

January 29, 1988

ORDER granting a petition for support of an agreement between a water utility and the New Hampshire Department of Transportation for the sharing of costs associated with the installation of a water main.

CONSTRUCTION AND EQUIPMENT, § 8 — Cost — Sharing agreement — Redundant water supply system.

[N.H.] In supporting a cost sharing agreement between a water utility and the New Hampshire Department of Transportation (NHDOT) for the installation of a redundant water supply system, the commission found that (1) the installation of the redundant system would allow the utility a continued source of supply in the event that some highway vehicle should be the cause of a catastrophic spill into the water shed, and (2) the highway construction program of the NHDOT would increase the probability of the occurrence of such a spill.

By the COMMISSION:

REPORT

In this docket the New Hampshire Department of Transportation (NHDOT) seeks Commission support for a cost sharing agreement between that department and Pennichuck Water Works (Pennichuck) for the installation of a water main that would connect the water Company's

Merrimack River source of supply directly to its treatment plant. This water main is being proposed in light of the NHDOT's highway construction activity which will cross and run parallel to the Pennichuck Brook water shed, the primary source of supply for Pennichuck.

NHDOT

The Department of Transportation testified that its construction program includes the Nashua - Hudson circumferential highway, widening the F.E. Everett Turnpike in the Pennichuck Brook area, and a connection from the F.E. Everett Turnpike to Route 101 also in this area. It recognizes that the construction of these roadways will be within the Pennichuck water shed and that they create a potential hazard to a public water supply. In recognition of this potential hazard, the NHDOT has offered to share in the cost to build a water main that will by-pass the Pennichuck Brook supply and feed Merrimack River water directly to the water treatment plant.

PENNICHUCK

Pennichuck testified that the main installation is desirable and would provide the company with an emergency supply should the Pennichuck Brook system become contaminated. Pennichuck would not, however, pursue the project at this time without some participation by others, primarily because of the amount of capital dollars required and other capital commitments of a higher priority.

COMMISSION ANALYSIS

It is our opinion that this main installation has merit and would allow Pennichuck a continued source of supply in the event that some highway vehicle should be the cause of a catastrophic spill into the Pennichuck Brook water shed. Testimony in this docket disclosed that there are currently about 12 miles of state owned, or major highways, within the water shed plus some 36 miles of lesser roadways. These all present some risk of contamination, but the N.H.D.O.T. recognizes that its construction program over the next ten years will approximately double the major highway miles with their greater probability of use by vehicles transporting potential contaminants.

The N.H.D.O.T. and Pennichuck have tentatively agreed to cost sharing in the area of 40 to 60%. We concur in this general division and encourage finalization of discussions and installation of the proposed main which we find will be in the public good.

Our order will issue accordingly.

ORDER

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

ORDERED, that the concurrence or support of this Commission is hereby granted for a cost sharing agreement between the New Hampshire Department of Transportation and the Pennichuck Water Works for the installation of a redundant water supply system.

By order of the Public Utilities Commission of New Hampshire this twenty-ninth day of January, 1988.

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NH.PUC*01/29/88*[51933]*73 NH PUC 43*Manchester NECMA Limited Partnership

[Go to End of 51933]

73 NH PUC 43

Re Manchester NECMA Limited Partnership

DR 87-257
Order No. 18,992

New Hampshire Public Utilities Commission

January 29, 1988

ORDER authorizing a cellular telephone service provider that had not yet begun operations to implement permanent rates based on projections.

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1. RATES, § 120 — Reasonableness — Statutory standard — Sufficiency of rates.

[N.H.] Pursuant to RSA 378:27, the commission determines rates for utility service based on the standard that the rates should 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. p. 47.

2. RATES, § 33 — Power to fix rates before operation begins — Cellular telephone service — Rates based on projections.

[N.H.] A cellular telephone service provider that had not yet begun operations was authorized to implement permanent rates based on projections; the commission found that it would not be in the public interest to approve temporary rates because to do so would subject the public to the risk of rate recoupment should the projections overstate the actual demand; however, to ensure that the rates would not yield an excessive equity return, the commission directed that the rates shall expire after two years, unless reapproved by the commission. p. 47.

3. RATES, § 559.1 — Telephone — Cellular service — Rate bands.

[N.H.] A cellular telephone service provider that had not yet begun operations was authorized to implement a banded rate concept whereby rate changes that fall within a band of 20% (plus or minus) on either side of approved effective rates may be approved by the

commission in a summary manner. p. 47.

4. MONOPOLY AND COMPETITION, § 83 — Telephone — Cellular service — Market-based rates.

[N.H.] The commission denied a request by a cellular telephone service provider for authority to adjust rates whenever necessary to meet competitive market forces; the commission concluded that to reduce the regulatory process in the manner requested would prevent it from fulfilling its responsibility to fix just and reasonable rates. p. 47.

5. SERVICE, § 451.2 — Telephone — Cellular service — Extended area service plan.

[N.H.] The commission approved an extended area service plan whereby a cellular telephone service provider would enter agreements with other wireline cellular carriers to enable its customers to use foreign systems without paying a charge to the underlying carrier of the foreign service area; it was found that the extended area service plan would serve as a competitive incentive for carriers to minimize the administrative burdens associated with billing for service provided from foreign service areas. p. 47.

6. RATES, § 559.1 — Telephone — Cellular service — Promotional rate.

[N.H.] A cellular telephone service provider was authorized to temporarily offer a below-cost promotional retail service order rate; it was found that the promotional rate would spur interest in retail service and that the rate could not be characterized as predatory because no other carrier was currently offering service in the service territory. p. 48.

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i. MONOPOLY AND COMPETITION, § 83 — Telephone — Cellular service — Market-based rates.

[N.H.] Statement, in separate opinion dissenting in part, that a cellular telephone service provider should be permitted to price its services in response to competitive market forces. p. 48.

APPEARANCES: David W. Marshall, 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 New Hampshire Public Utilities Commission.

By the COMMISSION:

REPORT ON PETITION
FOR RATES

This report concerns the original and amended petition of Manchester NECMA Limited Partnership (Manchester or the partnership) for temporary and permanent rates. The report details the procedural history of the case, and provides findings of fact and analysis. This report and order allows the partnership to put the amended rates into effect on a permanent basis with certain exceptions.

I. *Procedural History*

On December 18, 1987 Manchester filed its proposed tariff, NHPUC No. 1 — Cellular Tariff of the Manchester NECMA Limited Partnership for the provision of cellular service in the Manchester/Nashua New England County Metropolitan Area (NECMA), consisting of a title page and original pages 1-24 and original pages ERS-1 and ERS-2 of its effective rate sheet for effect January 18, 1988. On December 18, 1987, Manchester also filed a complaint for temporary rates based on the proposed permanent tariff rates pursuant to RSA 378:27 in the event that the commission suspended the effectiveness of the permanent rate tariff pages. The complaint further requested a waiver of N.H. Admin. Code puc §§ 1603.02, 1603.03, 1603.04, 1603.05, and 1603.06.

By order no. 18,961 (Jan. 6, 1988), the commission suspended the effect of the permanent rate tariffs pursuant to RSA 378:6 and granted a waiver of the above-mentioned rules under N.H. Admin. Code Puc § 201.05. The order scheduled a hearing on temporary rates pursuant to RSA 378:27 and/or interim permanent rates pursuant to RSA 378:28 on January 14, 1988.

The staff and the partnership discussed a settlement prior to the hearing but were unable to reach an agreement. On the date of the hearing Manchester filed amended tariff pages consisting of first revised pages 13, 15, 16, 17, 19, 20, 21, 24, and first revised pages ERS-1 and ERS-2 of its effective rate sheet.

II. *Positions of the Parties*

Two areas of concern were raised at the hearing on the merits: the validity of the rates and the administrative oversight of an extended service agreement. For the purpose of clarity, each issue will be addressed separately below.

A. *The Validity of The Rates*

The partnership supported its amended proposed tariff for effect as permanent rates. It argued that due to a lack of historical information on costs of service and subscriber penetration, the proposed rates were calculated based on rates in a similar service area and were based on value of

service[1] considerations.

The staff did not support or oppose the general rate levels of the amended petition. It objected to certain specific tariff provisions because they were beyond the authority of the company to charge and beyond the authority of the commission to approve.

Manchester's original tariff contained rates which the partnership alleged were based on the partnership's projected 1990 cost of service. These rates include so-called banded rates for service.

Banded rates are rates where the commission approves a minimum and a maximum rate, and the partnership is free to set rates within this minimum and maximum by filing an effective rate sheet with the commission. The original tariff included bands with a minimum and maximum that in many cases exceeded 60% (plus or minus), on either side of the proposed effective rate.

They were intended to produce a minimum of 10% return on equity and a maximum of 35-36% return on equity.

At the hearing, Manchester stated that its revised tariff pages were filed in response to the staff's concerns that the originally proposed rate bands were too wide. The revised tariff pages contained a band that was 20% (plus or minus), on either side of the proposed effective rate. The partnership argued that while it supported these tariffs as a compromise position, they are not cost-based, but rather are based on value of service considerations and are similar to Cellular One's (a Boston area cellular service provider's) rates. These rates would produce a minimum return on equity of 12 1/2% and a maximum return on equity of 31%.

The revised tariff contained three other major changes distinguishing it from the original tariff. First, there are several provisions referred to as the relief provisions that would allow Manchester to lower its minimum rates, without prior commission approval, to match the minimum rates charged for similar service by any other cellular company providing service in the Manchester/Nashua service area. Second, there is a promotional retail service order rate that would allow Manchester to charge one dollar for the establishment, restoration, or change of retail service from the effective date of the tariff until April 1, 1988. Third, there is a provision that would allow Manchester to change the billing increment utilized to bill for usage sensitive charges without prior commission approval. The tariff also contained two changes to bring the rates in conformance with the commission's rules concerning bad check charges and interest on customer deposits (N.H. Admin. Rule Puc §§ 403.08 and 403.04 respectively).

The staff objected to the provisions of the amended tariff concerning the relief provisions, the promotional service order charge, and the flexible billing increment. The staff argued that these proposals would be *ultra vires* of the company to charge and be *ultra vires* of the commission to approve.

The staff alleged that the promotional service order charge amounts to predatory pricing because the charge is below the company's average and marginal costs of service and, therefore, is an attempt to monopolize. The staff also averred that this rate is not in compliance with the statutory mandate under RSA 378:7 that the commission set rates that are “just and reasonable” since the rate would be confiscatory, *New England Teleph. & Teleg. Co. v. New Hampshire*, 104 N.H. 229 (1962) (ie., not “sufficient to yield not less than a reasonable return on the cost of the property of the utility....” RSA 378:28).

The staff opposed the so-called relief provisions because it argued that the commission does not have the authority to approve and public utilities do not have the authority to charge rates that have been filed with the commission except after 30 days notice to the commission and public notice under RSA 378:3. It also contends that the proposed language of the provision would allow the company to price below the level of the just and reasonable standard. The staff also takes issue with the timing increment flexibility proposed because under the statute a utility must have all terms and conditions of service on file (RSA 378:1), approved by the commission (RSA 374:1 and 374:2), and adequately noticed to the public (RSA 378:3).

B. *Extended Service Agreement*

Manchester argued in favor of its extended service agreements. It avers that these agreements will allow Manchester to provide extended service at the extended service rates contained in the tariff. The staff does not support or oppose these agreements. However, the staff pointed out several areas where commission oversight may be necessary.

Generally, when a customer of Manchester drives into a service area other than the Manchester/Nashua NECMA he or she would have to pay a charge to the underlying carrier of the foreign service area: a "roamer premium." Manchester testified that it will try to enter into agreements with other wireline cellular carriers to enable its customers to use the foreign system without paying a roamer premium. This service is provided under the tariff as extended service.

The staff questioned whether these contracts were a restraint of trade. Manchester testified that they were not. The staff argued that the contracts between the petitioner and other Contel corporations should be filed with and approved by the commission pursuant to RSA 366:3 and 366:5 respectively where such oversight would not be preempted by the Federal Communications Commission.

III. *Findings of Fact*

The following are findings of fact in this proceeding.

The partnership will be doing business as Contel Cellular of New Hampshire. Manchester stated at the hearing that it would be willing to amend the tariff to indicate not only its utility name but also the name that it is doing business as.

The partnership has done marketing studies in New Hampshire. Based on these studies it estimates that it will have 2,400 customers by the end of its third year of operations.

The originally proposed rates were intended to produce a revenue requirement at a minimum of $2,808,000 and a maximum of $4,057,000. The amended proposed rates are intended to produce a minimum revenue requirement of $2,933,278 and a maximum revenue requirement of $3,857,210.

IV. *Commission Analysis*

The commission finds that the revenue requirements requested in this case are supported by the evidence and are reasonable under the circumstances. We, therefore, approve the amended proposed rates as permanent rates with the following exceptions: we do not approve the relief provisions, and we approve the flexible billing increment provisions with the constraint that customer bills which result from a revised billing increment shall be

no higher than they would be if calculated under the tariffed increment provisions. The company will submit appropriate Effective Rate Sheets whenever changes are made to the billing increments. Manchester will be allowed to begin the provision of service on the date of this order.

[1,2] 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 378:27.

We will approve the amended proposed rates on a permanent basis. 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. However, these rates will expire two years from the date of this order unless reapproved by the commission. We will, therefore, be able to assure that these rates will not yield a higher return on equity than the commission would normally allow.

To protect the public from excessive or extortionate rates, we will require the partnership to file the next 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.

[3] We will approve the banded rate concept as filed in its revised tariff pages, and which contain a band of 20% (plus or minus) on either side of the proposed effective rate. The commission shall be noticed by the filing of an Effective Rate Sheet setting forth the specific rate to be charged during the service period. If said rate falls within the approved band, the commission may approve same pursuant to RSA 378:3 in a summary manner. If said rates fall outside of the approved band, then the commission shall exercise its discretion to approve the proposed rate pursuant to RSA 378:3 or to conduct a hearing pursuant to RSA 378:7 et seq.

[4] We depart from our fellow commissioner on the treatment of rates below (or above) the approved rate band. The petitioner requested the opportunity to do so whenever that action became necessary to meet competitive market forces. It requested, in effect, that we pre-approve rates which have not yet been filed. We will not do so. The commission is charged with the responsibility to fix just and reasonable rates, and it can do so only upon a proper review. To reduce the regulatory process in the manner prescribed by the petitioner would not fulfill the responsibility conferred upon the commission.

[5] We find that the Extended Service Agreement plan to be in the public interest. This plan will provide a service to customers by avoiding their having to make payments to underlying carriers of a foreign service area, and will serve as a competitive incentive for carriers to minimize the administrative burdens associated with roaming. We will require that all Extended

Service Agreements be filed with this commission.

[6] We find that the proposed promotional service order charge is just and reasonable, under the circumstances. Since there is presently no other underlying carrier in the service territory, customers will have to take service from Manchester or not get service at all. This promotional rate will spur interest in the service. Should customers decide to switch carriers once the competing underlying carrier has been franchised, they will not lose a large service order charge for their introductory service from Manchester. Therefore, the rate should not have a predatory

affect on the competing underlying carrier.

The company shall amend its tariff to include not only the utility name Manchester NECMA Limited Partnership but also the name under which it will be doing business: Contel Cellular of New Hampshire. Manchester will also be required to file all affiliate contracts for approval pursuant to RSA 366:3 and 366:5.

Our order will issue accordingly.

ORDER

Upon consideration of the foregoing Report on Petition for Rates, which is made a part hereof, it is hereby

ORDERED, that with the exceptions contained in the foregoing report, NHPUC No. 1 — Cellular Tariff of the Manchester NECMA Limited Partnership for the provision of cellular service in the Manchester/Nashua New England County Metropolitan Area (NECMA) consisting of a title page; original pages 1-12, 14, 18, 22, and 23; and first revised pages 13, 15, 16, 17, 19, 20, 21, and 24 and first revised pages ERS-1 and ERS-2 of its effective rate sheet is approved for effect as of the date of this order; and it is

FURTHER ORDERED, that Manchester file a compliance tariff that reflects the rulings in the foregoing report with the following notation at the bottom of every page: “Authorized by NHPUC Order No. 18,992 in Docket No. DR 87-257, dated January 29, 1988.”

FURTHER ORDERED, that Manchester will comply with the provisions of RSA 366:3 and 366:5.

By order of the Public Utilities Commission of New Hampshire this twenty-ninth day of January, 1988.

Separate Opinion of Commissioner Linda G. Bisson concurring in Part and Dissenting in Part

[i] I concur with the report and order of my colleagues but for the restrictions on retail and wholesale rate reductions.

The majority approves, and I concur with, the banded rate concept as filed in the revised tariff pages.

However, the majority denies the company's request that “minimum rates may be lowered without approval of the New Hampshire Public Utilities Commission to meet the minimum rates charged for similar service by any other cellular company providing service in the Contel service area”.

Unlike other regulated utilities that operate in a traditional monopolistic environment, Contel Cellular will, in the near future, face competition from the second FCC-approved cellular carrier in the service territory, as well as from resellers of cellular service. In this competitive and technologically sensitive environment, I would approve the requested manner of reducing rates below the band for the two-year effective period of this order, and require only that the commission be

noticed of such a reduction by the filing of a revised Effective Rate Schedule.

It is not clear to me that such implementation of rates below the band would result in pricing difficulties. Should such problems develop, this Commission remains a forum to receive complaints or to investigate any alleged unreasonableness of such reduced rates. *See e.g.*: RSA 365:1, RSA 378:7.

FOOTNOTES

[1]Value of service is where services are priced based on the perceived benefit received by the customer. One example of a factor in value of service pricing might be how many other subscribers a caller can contact without incurring a distance charge.

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NH.PUC*02/02/88*[51934]*73 NH PUC 49*Pennichuck Water Works, Inc.

[Go to End of 51934]

73 NH PUC 49

Re Pennichuck Water Works, Inc.

DE 87-115
Order No. 18,994

New Hampshire Public Utilities Commission

February 2, 1988

ORDER denying motion for rehearing of prior order that had declined to dismiss a water utility's petition for authority to provide service in a disputed service territory. For prior order see, 72 NH PUC 573.

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1. SERVICE, § 210 — Water — Extension of service into franchise area of another — Procedure.

[N.H.] In denying a motion for rehearing of prior order that had declined to dismiss a water utility's petition for authority to provide service in a franchise area that previously had been granted to a competing utility, the commission found that it had correctly applied the statutory standards governing petitions to provide service. p. 50.

2. SERVICE, § 176 — Extensions — Rules and regulations — Requests to serve franchise area of another.

[N.H.] In order for a utility to be successful in obtaining permission to serve a franchise area that previously had been granted to another utility, the utility seeking permission to serve the franchise area must prove that the utility currently possessing the authority to serve the area has unreasonably failed to provide adequate service, and the commission must find that granting

authority to serve the territory to the utility seeking to serve the area would be in the public interest; moreover, the commission must choose between the competing utilities to determine which utility will best serve the public good. p. 50.

By the COMMISSION:

REPORT ON THE MOTION TO
REHEAR ORDER NO. 18,936

On December 28, 1987 Southern New Hampshire Water Company, Inc. (Southern) filed a motion for rehearing of *Re Pennichuck Water Works, Inc.*, DR 87-115, Report and Supplemental Order No. 18,936 (December 21, 1987) (72 NH PUC 573) pursuant to RSA 541:3. Upon consideration of this motion, this report and order reaffirms our initial decision not to dismiss the underlying petition or order specification of the petition.

To fully address this motion, the following procedural background must be discussed. On June 19, 1987 Pennichuck Water Works, Inc. (Pennichuck) filed a petition for permission to engage in

business as a public utility in a limited area of the Town of Amherst pursuant to RSA 374:22.

Southern New Hampshire Water Company, Inc. already has commission permission to provide service in the petitioned-for service area. Therefore, the petition implicitly requests that the commission withdraw Southern's authority pursuant to RSA 374:28.

On August 14, 1987 Southern filed a motion for specification or, in the alternative, to dismiss the petition. The motion averred that Pennichuck's petition failed to allege facts that would support the findings required under RSA 374:28 to remove public utility authority from Southern.

Report and Supp. Order No. 18,936 was issued after oral argument on the motion. In that report and order we found that Pennichuck had made sufficient allegations to go forward under RSA 374:28. By that order the commission required Pennichuck to amend its petition “to state facts which address the allegations it makes under 374:28.” We also ordered Pennichuck to state why it is better qualified than Southern to be the water utility in the service area.

[1, 2] The motion for rehearing argues that because we have required Pennichuck to prove that it is better qualified than Southern that we have “applied the wrong standard under RSA 374:28 in considering whether to grant or deny” the petition. Further, it avers that the commission may not withdraw Southern's permission to do business as a public utility without a finding that Southern has “declined or unreasonably failed to render service or that is service ... is inadequate, no sufficient reason for the inadequacy appearing.” RSA 374:28. The motion prays for a rehearing to reconsider Southern's motion for specification or, in the alternative, for dismissal in light of RSA 374:28.

In Report and Order No. 18,936 we noted that we had ruled from the bench that Pennichuck

had made sufficient allegations to allow it to go forward under RSA 374:28. We stated the standard under RSA 374:28 by reference to that statutory cite. It is not necessary to paraphrase or quote the statutory language in order for us to convey what standard was used.

In order for Pennichuck to be successful in its request for permission to engage in business as a public utility under RSA 374:22 the commission must, first, make a finding that Southern has unreasonably failed to render service or that Southern's service is inadequate without a sufficient reason pursuant to RSA 374:28; and second, make a finding that the granting of such permission is in the public good pursuant to RSA 374:26. In addition, under RSA 374:26 the commission must choose between competing utilities to determine which utility will best serve the public good. *Parker-Young Co. v. New Hampshire,* 83 N.H. 551, PUR1929E 160, 145 Atl. 786 (1929). Thus, in our order we required the petitioner to produce evidence to support these findings.

We applied the appropriate standard under RSA 374:28 in our report and order so there is no good reason pursuant to RSA 541:3 to grant a rehearing. Therefore, the motion for rehearing is denied.

Our order will issue accordingly.

ORDER

Upon consideration of the foregoing Report on the Motion to Rehear Order No. 18,936, which is made a part hereof, it is hereby

ORDERED, that the December 28, 1987

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motion for rehearing on behalf of Southern New Hampshire Water Company is denied.

By order of the Public Utilities Commission of New Hampshire this second day of February, 1988.

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73 NH PUC 51

Re Pennichuck Water Works, Inc.

DE 87-22, DE 87-23, DE 87-26, DE 87-27
Order No. 18,997

New Hampshire Public Utilities Commission

February 9, 1988

ORDER denying rehearing of prior orders that had authorized a water utility to provide service in areas outside its then existing service area and had authorized the utility to file revised tariffs reflecting interim rates for service to those areas. For prior orders see 72 NH PUC 589.

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1. PROCEDURE, § 32 — Rehearings and reopenings — Grounds for denial.

[N.H.] A motion for rehearing and reconsideration of prior orders was denied where the motion requested that the commission make the exact determinations it had made in the prior order and failed to state any reason requiring rehearing or reconsideration. p. 52.

2. SERVICE, § 210 — Water — Extensions — Authorization to provide service.

[N.H.] The commission denied a motion for rehearing or reconsideration of prior orders that had authorized a water utility to provide service in areas outside its then existing service area and had authorized the utility to file revised tariffs reflecting interim rates for service to those areas; the motion was denied notwithstanding the contentions that the prior orders would have the effect of (1) frustrating future commission attempts to integrate the water supply system, and (2) cutting off an important source of water supply and potential customers that might otherwise be available to a competing utility; the commission found that the first contention was without merit because the commission has the power to reassign franchise areas to the owner of an integrated water supply system if necessary to ensure adequate service, and that the second contention did not warrant rehearing of the orders because the record evidence did not support a finding that the water source in question would be able to support any customers outside the franchise area in which it is located. p. 52.

By the COMMISSION:

REPORT ON MOTION
FOR REHEARING

On January 20, 1988 Southern New Hampshire Water Company, Inc. (Southern) moved that the commission rehear and reconsider pursuant to RSA 541:3, its report and orders nos. 18,952 — 18,955 issued December 31, 1987 (72 NH PUC 589). Upon consideration of the motion, this report and order denies the requested relief.

The following procedural background is set forth to facilitate a consideration of the motion. On February 20, 1987 and February 25, 1987 Pennichuck Water Works, Inc. (Pennichuck) filed three petitions for permission to serve limited areas of the Town of Derry (dockets DE 87-22, DE 87-26, and DE 87-27). On February 20, 1987 Pennichuck filed a petition to serve the Town of Plaistow (docket DE 87-23). The previously mentioned report and orders granted Pennichuck authority to operate in the requested areas.

On January 20, 1988 Southern moved

that the commission reconsider and grant a rehearing of the report and orders. The motion seeks hearing on two bases. First, Southern asserts that the commission's orders, by implication, granted temporary or conditional operating authority because the report found that future

integration of the water system may require reassignment of the franchises. Southern argues that, if the commission intended to make the authority permanent, it should grant a rehearing. A rehearing would be necessary, it avers, because the commission does not have the power to revoke or reassign a franchise under RSA 374:28 "simply because a utility has failed to acquire new customers in and interconnect its system to surrounding areas," unless these standards are franchise conditions. It contends that, this lack of authority would frustrate future commission attempts to integrate the water supply system. Motion at 3.

Second, Southern requested a rehearing concerning the grant of operating authority for the Twin Ridge Development in Plaistow (docket DE 87-23, order no. 18,953). It argued that the development of this franchise will cut off an important source of water supply and potential customers that might otherwise have been available to Southern's abutting Rolling Hills franchise area.

[1, 2] As discussed below, the motion for rehearing and reconsideration asks us to make the exact determinations that we made in the original report and order without any "good reason" pursuant to RSA 541:3. Therefore, we deny the motion for rehearing and reconsideration.

The report and orders do not state that the franchises are temporary or subject to any conditions. Under RSA 374:28, the commission may withdraw utility authority where service is inadequate. When an integrated water system has been developed, the adequacy of utility water service will be measured against the level of service that can be provided through the integrated system and the possible new technologies utilized by the system. At that time, should the non-integrated areas provide inadequate service as measured by the new standard, the commission can consider reassigning the franchise to the owner of the integrated system. Therefore, the permission granted will not frustrate the eventual integration of the water supply systems in Derry and Plaistow. Therefore, rehearing is denied on this ground.

Concerning the second argument for rehearing, the commission was not aware that Southern was looking at the Twin Ridge Development as an important source of water supply. In any event, the evidence in the record does not support a finding that more than one water source is available in the Twin Ridge Development or that the one source of water would be able to support any more customers than it can support in the Twin Ridge franchise area. Therefore, it is unnecessary to reconsider our original decision that the requested permission to provide service was in the public good. The commission weighed the facts stated in the motion as well as many other facts in making its determination that the petition was consistent with the current development of the area. Report at 12. Accordingly, rehearing is denied on this ground.

Our order will issue accordingly.

ORDER

Upon consideration of the foregoing Report on Motion for Rehearing, which is made a part hereof, it is hereby

ORDERED, that the January 20, 1988 motion for rehearing and reconsideration

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of Southern New Hampshire Water Company, Inc. of report and orders no. 18,952 — 18,955

(December 31, 1987) is denied.

By order of the Public Utilities Commission of New Hampshire this ninth day of February, 1988.

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[Go to End of 51936]

73 NH PUC 53

Re Pennichuck Water Works

DE 88-001
Order No. 18,998

New Hampshire Public Utilities Commission

February 9, 1988

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

SERVICE, § 210 — Extensions — Water service — New territory.

[N.H.] A water utility was conditionally authorized to extend service into an area outside its then existing service area where no other water utility had franchise rights in the area sought, the town government of the area to be served did not object, the utility agreed to serve the area under its regularly filed tariff, and the commission was satisfied that authorizing the extension would be in the public good.

By the COMMISSION:

ORDER

WHEREAS, Pennichuck Water Works, a water public utility operating under the jurisdiction of this Commission, by a petition filed December 31, 1987, seeks authority under RSA 374:22 and 26 as amended, to extend its mains and service in to the Town of Hollis; and

WHEREAS, no other water utility has franchise rights in the area sought, and the Petitioner submits that the area will be served under its regularly filed tariff; and

WHEREAS, after investigation and consideration, this Commission is satisfied that the granting of the petition will be for the public good; and

WHEREAS, the public should be offered an opportunity to respond in support or in opposition before the Commission acts on this petition; it is hereby

ORDERED, that all persons interested in responding to the petition be notified that they may

submit their comments to the Commission or may submit a written request for a hearing in this matter no later than February 26, 1988; and it is

FURTHER ORDERED, that Pennichuck Water Works effect said notification by publication of an attested copy of this Order once, in a newspaper having general circulation in that portion of the State in which operations are proposed to be conducted, such publication to be no later than February 19, 1988 and designated in an affidavit to be made on copy of this Order and filed with this office on or before February 29, 1988; and it is;

FURTHER ORDERED, *NISI* that Pennichuck Water Works be authorized pursuant to RSA 374:22, to extend its mains and service into the Town of Hollis in an area herein described, and as shown on a map on file in the Commission offices:

> Meaning to include that area of the Town of Hollis bounded on the east by the City/Town line of Nashua and Hollis, and on the west, north and south by the easterly shore of the Nashua River.

and it is

FURTHER ORDERED, that such

authority shall be effective on February 29, 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; and it is

FURTHER ORDERED, that such authority shall be contingent upon representation to this Commission that the Town of Hollis has no objection to the granting of the authority here sought.

By order of the Public Utilities Commission of New Hampshire this ninth day of February, 1988.

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NH.PUC*02/10/88*[51937]*73 NH PUC 54*Merrimack County Telephone Company

[Go to End of 51937]

73 NH PUC 54

Re Merrimack County Telephone Company

DR 88-09
Order No. 19,001

New Hampshire Public Utilities Commission

February 10, 1988

ORDER authorizing an independent telephone company to eliminate its main, joint user, and

subscriber transfer service.

SERVICE, § 275 — Discontinuance — Telephone services — Commission authorization — Independent telephone company.

[N.H.] An independent telephone company was authorized to eliminate its main, joint user,

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and subscriber transfer services where (1) main telephone service was precluded by the company's digital switch, (2) subscriber transfer service had been replaced by custom call forwarding, and (3) no customer subscribed to joint user or subscriber transfer service.

By the COMMISSION:

ORDER

WHEREAS, on December 31, 1987 Merrimack County Telephone Company (Merrimack) filed a tariff proposing to eliminate main, joint user, and subscriber transfer service from its tariff NHPUC No. 7 — Telephone; and

WHEREAS, main telephone service is precluded by Merrimack's digital switch; and

WHEREAS, subscriber transfer service has been replaced by custom call forwarding; and

WHEREAS, no customers subscribe joint user or subscriber transfer service; it is hereby

ORDERED, that the following tariff page canceled prior tariff pages in Merrimack's NHPUC No. 7 — Telephone tariff:

Part III, Section 11, Combination of Main Telephone Services Page 1, First Revision Cancels Original; and

Part III, Section 40, Superceded Services Page 5, First Revision Cancels Original;

and it is

FURTHER ORDERED, that Part III, General, User Service, Page 1, First Revision and Part III, General, Section 23, Subscriber Transfer Service, Page 1, First Revision be deleted; and it is

FURTHER ORDERED, that these revisions to Merrimack's NHPUC No. 7 — Telephone tariff be effective February 1, 1988.

By order of the Public Utilities Commission of New Hampshire this tenth day of February, 1988.

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NH.PUC*02/10/88*[51938]*73 NH PUC 55*Town of Greenville

[Go to End of 51938]

73 NH PUC 55

Re Town of Greenville

DE 88-018
Order No. 19,002

New Hampshire Public Utilities Commission

February 10, 1988

ORDER exempting a municipal water utility from public utility status.

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1. PUBLIC UTILITIES, § 57 — Municipal water utility — Operations beyond corporate limits — Exemption from public utility statutes.

[N.H.] RSA 362:2 provides that municipal corporations providing water service outside their corporate limits are public utilities; nevertheless, RSA 362:4 provides that if the whole of such a water system supplies less than 10 customers, the commission may grant exemption from compliance with state public utility statutes. p. 56.

2. PUBLIC UTILITIES, § 57 — Municipal water utility — Operations beyond corporate limits — Exemption from public utility statutes.

[N.H.] A municipal water utility providing service outside its corporate limits was granted an exemption from compliance with public utility statutes where the whole of the utility's system supplied less than 10 customers. p. 56.

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By the COMMISSION:

ORDER

[1, 2] WHEREAS, the Town of Greenville which operates a central water system in Greenville, New Hampshire, by a petition filed January 28, 1988, seeks exemption from the provisions of RSA 362:4, for service provided to two customers in the Town of New Ipswich, New Hampshire and two customers in the Town of Temple, New Hampshire; and

WHEREAS, RSA 362:2 provides *inter alia*, that municipal corporations providing water service outside their corporate limits are as public utilities; and

WHEREAS, RSA 362:4 also provides, *inter alia*, that if the whole of such water system supplies less than 10 customers, the Commission may grant exemption from the provisions of these statutes; and

WHEREAS, after investigation and consideration, this Commission is satisfied that the granting of exemption here sought will be for the public good; it is

ORDERED, that exemption from public utility statutes be, and hereby is, granted to the Town of Greenville, for water service provided in the Towns of New Ipswich and Temple; and it is

FURTHER ORDERED, that the Town of Greenville, shall notify this Commission if at some future time it shall expand its water system to service ten or more customers outside the Town of Greenville.

By order of the Public Utilities Commission of New Hampshire this tenth day of February, 1988.

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NH.PUC*02/10/88*[51939]*73 NH PUC 56*Contel of New Hampshire, Inc.

[Go to End of 51939]

73 NH PUC 56

Re Contel of New Hampshire, Inc.

DR 87-48
Order No. 19,003

New Hampshire Public Utilities Commission

February 10, 1988

ORDER requiring a telephone carrier to defer implementation of non-optional measured business usage service pending the completion of a generic investigation of telephone rate structure.

RATES, § 544 — Business and residence — Non-optional measured business usage service — Deferred implementation.

[N.H.] A telephone carrier was directed to defer implementation of non-optional measured business usage service pending the completion of a generic investigation of telephone rate structure.

By the COMMISSION:

ORDER

WHEREAS, this docket was opened pursuant to Order No. 18,616 in DR 87-48 (March 26, 1987) (72 NH PUC 103) to determine what other action on the part of the commission and Contel of New Hampshire, Inc. (formerly known as Continental Telephone Company of New Hampshire) may be appropriate regarding the implementation of non-optional business usage service so as to best serve the public good ; and

WHEREAS, Contel of New Hampshire (Contel-N.H.) was granted permission to begin non-optional usage pricing for all business subscribers effective January 1,

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1987 by Order No. 18,129 in DR 85-219 (February 21, 1986) (71 NH PUC 130), and pursuant to Order No. 18,536 was required to conduct 90 additional days of dual billing; and

WHEREAS, Order No. 18,616 (March 26, 1987) opened a docket to investigate the provision of mandatory business usage pricing, and a moritorium was issued on Contel-N.H.'s non-optional usage pricing; and

WHEREAS, Contel-N.H. filed with the commission on May 1, 1987 a report reflecting the comparative billing data collected and said report and ensuing data requests indicate that if non-optional business usage pricing was implemented on a revenue-neutral basis, an increase in business usage rates would be necessary; and

WHEREAS, there is currently pending before the commission a generic proceeding, Docket No. DR 85-182, with respect to telephone rate structure; it is hereby

ORDERED, that implementation of non-optional measured business usage service be deferred pending the conclusion of Docket No. DR 85-182, and that Contel-N.H. provide a bill insert to its business subscribers notifying them of this order.

By Order of the Public Utilities Commission of New Hampshire this tenth day of February, 1988.

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NH.PUC*02/10/88*[52117]*73 NH PUC 54*Merrimack County Telephone Company

[Go to End of 52117]

73 NH PUC 54

Re Merrimack County Telephone Company

Additional party: Excalibur Store Fixtures, Inc.

DR 88-008
Order No. 19,000

New Hampshire Public Utilities Commission

February 10, 1988

ORDER approving a special contract rate for the provision of telephone service.

RATES, § 534 — Telephone — Special contract rates.

[N.H.] A special contract rate for the provision of telephone service was approved where only one customer desired the service contracted for and the rates specified in the contract covered the cost of the offering.

By the COMMISSION:

ORDER

WHEREAS, Merrimack County Telephone Company (Merrimack) filed with the commission on January 8, 1988 Special Contract No. MCT 005 by which it proposes to provide a 4-wire, full duplex data circuit between Excalibur Store Fixture's office in Bradford, New Hampshire and its office in Contoocook, New Hampshire; and

WHEREAS, Excalibur Store Fixtures is the only customer desiring the service and since the rates specified in the contract cover the cost of the offering, the commission is of the opinion that special circumstances exist which render the terms and conditions of Special Contract No. MCT 005 just and consistent with the public interest; it is hereby

ORDERED, that said contract become effective February 1, 1988.

By order of the Public Utilities Commission of New Hampshire this tenth day of February, 1988.

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NH.PUC*02/11/88*[51940]*73 NH PUC 57*Pittsfield Aqueduct Company, Inc.

[Go to End of 51940]

73 NH PUC 57

Re Pittsfield Aqueduct Company, Inc.

DE 87-250
Order No. 19,007

New Hampshire Public Utilities Commission

February 11, 1988

ORDER authorizing a water utility to increase its rates to recover costs associated with the implementation of metered service.

RATES, § 604 — Water service — Meter charges.

[N.H.] A water utility that had been directed by prior order to proceed with the installation of water meters was authorized to increase its rates to recover costs associated with 50 meters installed during the year 1987.

By the COMMISSION:

ORDER

WHEREAS, in this docket and Order No. 15,556 in docket No. DR 80-125 (67 NH PUC 250), Pittsfield Aqueduct Company, Inc. (Pittsfield) was directed to proceed with the annual installation of 50 new meters until all customers have metered service; and

WHEREAS, staff investigation has revealed that as of this date, Pittsfield has installed 280 meters under Order No. 15,556 leaving a remainder of 236 customers still unmetered; and

WHEREAS, Pittsfield has submitted that the capital cost of 50 meters installed during the year 1987 is $8,489.50, with attendant increased operating expenses of $424 for depreciation and $90 for meter

reading; and

WHEREAS, the increases so incurred result in an additional revenue requirement of $1,608.30; it is hereby

ORDERED, that Pittsfield Aqueduct Company, Inc. may increase its revenue, effective with all bills rendered after February 1, 1988, by $1,608.30.

By order of the Public Utilities Commission of New Hampshire this eleventh day of February, 1988.

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NH.PUC*02/16/88*[51941]*73 NH PUC 58*Manchester NECMA Limited Partnership

[Go to End of 51941]

73 NH PUC 58

Re Manchester NECMA Limited Partnership

DE 87-222
Order No. 19,009

New Hampshire Public Utilities Commission

February 16, 1988

ORDER granting motion by a cellular telephone service provider for leave to supplement a petition for a zoning exemption.

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1. ZONING — Exemptions from local ordinances — Utility structures — Statutory authority.

[N.H.] State statute RSA 674:30 provides that the commission may grant exemptions from the operation of local zoning ordinances, codes and regulations; in order for the commission to grant such an exemption it must find that the present or proposed utility structure is reasonably necessary for the convenience or welfare of the public. p. 60.

2. ZONING — Exemptions from local ordinances — Utility structures — Commission authority.

[N.H.] The commission has broad authority to grant exemptions from local zoning regulations where the regulations prohibit or frustrate the planning, building, or operation of a public utility structure. p. 60.

3. ZONING — Exemptions from local ordinances — Utility structures — Factors considered.

[N.H.] In determining whether to exempt a proposed public utility structure from local zoning regulations the commission is required to consider (1) the suitability of the locus chosen for the utility structure, (2) the physical character of the uses in the neighborhood, (3) the proximity of the site to residential development, (4) the effect on abutting owners, (5) its relative advantages and disadvantages from the standpoint of public convenience and welfare, (6) whether other equally serviceable sites that would have less impact on the local zoning scheme are reasonably available. p. 60.

4. ZONING — Exemptions from local ordinances — Utility structures — Conditions on exemptions — Commission authority.

[N.H.] The commission has authority to impose conditions on exemptions from local zoning ordinances in consideration of the health and safety of local residents. p. 61.

5. ZONING — Exemptions from local ordinances — Utility structures — Commission authority.

[N.H.] The commission may exempt public utilities from local zoning regulations even if the regulations are administered in a non-exclusionary manner. p. 61.

By the COMMISSION:

REPORT CONCERNING MOTIONS
FOR LEAVE TO SUPPLEMENT
PETITION AND FOR
CONSOLIDATION

Page 58

The following report concerns a motion for leave to file a supplement to the partnership's original petition for a zoning exemption, and a motion to consolidate the commission's consideration of the original petition and the supplement to the petition. It provides the procedural history necessary for the consideration of the motions. It summarizes the positions presented in the motions and the Town of Merrimack's objection to the motions. It provides an analysis of the issues and approves the motions.

I. *Procedural History*

On November 4, 1987, the Manchester NECMA Limited Partnership filed a petition for an exemption for its proposed transmission/receiving tower and utility building on Hutchinson Road, Merrimack, New Hampshire on a site known as Merrimack Tax Map 4C, Lot 502 (Lot 4C-502) from the operation of the Town of Merrimack's zoning ordinance and "such other relief as may be just and equitable." By an order of notice dated November 23, 1987, the commission scheduled a hearing for January 26, 1988, at 11:00 a.m. and a view of the site at 9:00 a.m. The order of notice stated that the commission was going to be investigating an exemption from the zoning ordinance "or any other regulation in the town of Merrimack."

On December 30, 1987, 20 families living in the Hutchinson Road, Merrimack, New Hampshire neighborhood, filed a request that the commission continue the scheduled hearing for four to six weeks to allow them time to seek additional information from the petitioner regarding the proposed tower and the availability of alternative sites and facilities. On January 6, 1988, Manchester filed an objection to the request.

On December 30, 1987, the Town of Merrimack filed a motion to intervene. Manchester, on January 6, 1988, filed an objection to the motion or, in the alternative, a motion to limit the participation of the Town of Merrimack.

On January 18, 1988, the commission issued order no. 18,978. By this order, the commission allowed the intervention of the Town of Merrimack and the twenty families. It continued the hearing until February 18, 1988, at 10:30 a.m. with the site view at 9:00 a.m.

On January 22, 1988, Manchester filed a motion for leave to supplement its original petition to include a request for exemption from the operation of the subdivision, site plan review, building and all other regulations, ordinances and codes of the Town of Merrimack, in addition to the originally requested zoning exemption. It also requested that the commission consolidate consideration of the supplemental petition and the original petition at the February 18th hearing. On February 1, 1988, the Town of Merrimack filed an objection to the motions for leave to supplement the petition and consolidation.

II. *Positions of the Parties*

In its motion, the petitioner supports its petition for leave to supplement by arguing that the delays that would occur as result of the Town's review of the site layout, structural design, and construction of the proposed tower (in addition to the already elongated commission investigation) could frustrate the petitioner's ability to meet its Federal Communications Commission (F.C.C.) permit obligations and its New Hampshire franchise obligations.[1(1)] The petitioner has alleged that the tower and related equipment, structures and improvements are eligible for a

commission exemption under RSA 674:30 III. because the square footage of the structure is greater than 200 square feet.

In its objection, the Town of Merrimack argues that the commission may only grant

exemptions from existing local land use regulations that prohibit the public utility structure. It also argues, citing *Stablex Corp. v. Town of Hooksett,* 122 N.H. 1091 (1982) and *Applied Chemical Technology v. Town of Merrimack,* 126 N.H. 45 (1985), that the commission may not exempt utilities from local regulations that are administered in a non-exclusionary manner. Further, it avers that fear of delay is an insufficient basis to seek such an all encompassing exemption.

III. *Commission Analysis*

In light of our authority and the circumstances of this case we find that it is appropriate to grant the petitioner's motions.

[1,2] Effective July 10, 1987, the New Hampshire legislature amended the statute that allows the commission to grant exemptions. Since the partnership filed its petition on November 4, 1987, the commission's decision must be made pursuant to the amended statute. RSA 674:30 (Supp. 1987). This law provides that the public utilities commission may grant exemptions from the operation of local zoning ordinances, codes, and regulations where a proposed utility structure either is unoccupied and is less than 200 square feet and has been denied a waiver of the ordinances, codes, and regulations by a planning board under RSA 674:30 I. (Supp. 1987); or where the proposed structure is larger than 200 square feet or is occupied. RSA 674:30 III. (Supp. 1987). In order for the commission to grant such an exemption it must make a finding that "the present or proposed situation of the structure is reasonably necessary for the convenience or welfare of the public." *Id.*

The statute that gives the commission authority to grant exemptions from local ordinances, codes, and regulations does not state that the commission may only grant such exemptions where the ordinances, codes, and regulations prohibit the structure. Therefore, we find that the commission has broad authority to grant such exemptions where the regulations prohibit or frustrate the planning, building, or operation of the structure.

The town may not create regulations that would have the effect of frustrating or prohibiting a structure that has been approved by the commission. While local planning boards have the authority to make ordinances, codes, and regulations concerning public utility structures (RSA 674:30 II. (Supp. 1987)) the clear language of RSA 674:30 III. (Supp. 1987) allows the commission to grant exemptions from such ordinances, codes, and regulations. In addition, the town may not adopt a zoning ordinance that applies to an existing structure or the existing use of any building. RSA 674:19, *Town of Jackson v. Town & Country Motor Inn, Inc.,* 120 N.H. 699, 422 A.2d 1034 (1980).

[3] New Hampshire law requires the commission to consider not only the engineering and economic aspects of a project, but also the planning characteristics including aesthetic character. To be specific the commission is required to consider

> the suitability of the locus chosen for the utility structure, the physical character of the uses in the neighborhood, the proximity of the site to residential development, the effect on abutting owners, its relative advantages and disadvantages from the standpoint of

> public convenience and welfare, whether other equally serviceable sites are reasonably available but purchase or condemnation which would have less impact on the local zoning scheme....
>
> *Re Milford Water Works,* 126 N.H. 127, 131 quoting *Re Public Service Electric & Gas Co.,* 100 N.J.Super.Ct. 1, 73 PUR3d 273, 241 A.2d 15, 20 (1968) (emphasis in original).

[4] The commission also has the authority to impose conditions on exemptions in consideration of the health and safety of local residents. *Re Milford Water Works,* 126 N.H. 127, 133 (1985). The New Hampshire Supreme Court has also found that the clear legislative purpose of the zoning exemption statute was to subordinate local zoning regulations to the broader public interest served by the utility. *Id.* at 131. Any town review of the site layout, structural design, and construction of the proposed tower could frustrate the petitioner's ability to meet its New Hampshire franchise obligations. Thus, such reviews would be preempted by a commission determination that the structure is reasonably necessary for the convenience or welfare of the public.

[5] The town's argument that the commission may not exempt utilities from local regulations that are administered in a non-exclusionary manner is incorrect. To determine the commission's jurisdiction, we must determine the legislative intent of the enabling statute. It is an elementary rule of statutory interpretation that consideration must be given, if possible, to the plain meaning of the statute. Note, *A Re- evaluation of the Use of Legislative History in the Federal Courts,* 52 Columbia Law Review 125 (1952). Under the plain language of the statute, the commission may exempt public utility structures "from the operation of *any* local ordinance, code or regulation enacted under this title." (Emphasis added.) The title allows the town to promulgate ordinances to regulate and restrict, among other things, the size of buildings, lots, population density, location and uses of buildings, structures, and land (RSA 674:16 (1986)); to review site plans (RSA 674:43 (Supp. 1987)); and to adopt a local building code (RSA 674:51 (1986)). Thus, it is clear that the commission may exempt public utility structures from any of these restrictions and any other regulations promulgated under Title LXIV.

In *Applied Chemical* the New Hampshire Supreme Court cited the *Stablex* case as standing for the proposition that RSA chapters 147-A, 147-B, 147-C, and 147-D preempt "any local actions having the intent or the effect of *frustrating*" the State regulation of hazardous waste. *Applied* at 47, citing *Stablex,* at 1102 (emphasis in original). However, the court found that these chapters did not preempt

> any local regulations relating to such matters as traffic and roads, landscaping and building specifications, snow, garbage, and sewage removal, signs and other related subjects, to which any industrial facility would be subjected and which are administered in good faith and *without exclusionary effect* .... (emphasis in original).[2(2)]

We distinguish the rationale used in the *Stablex* and *Applied Chemical* cases from the rationale applicable to utility structure exemptions. First, the above decision interpreted the RSA chapters 147-A, 147-B, 147-C, and 147-D. The Supreme Court did not make any determination concerning the interpretation of the public utility

zoning exemption statute. Second, the purpose of exemptions for utility structures is that sometimes the chosen site is the only location where the structure can be built.[3(3)] Although the local regulations do not have a direct exclusionary effect on the siting of the facility they may have a frustrating effect on the state regulation of public utilities. In addition, the commission will have already made the review and set the conditions which would otherwise have been the authority of the town. Therefore, preempted by a commission decision that a structure is necessary for the convenience or welfare of the public.

We are concerned that the petition may be too broad. However, the petitioner may correct this by identifying the specific ordinances, codes, and regulations that it seeks exemptions from on the date of the hearing. The petitioner will also be required to show how these ordinances, codes, and regulations frustrate or prohibit the proposed structure.

There was adequate notice to the public and the parties that the commission would investigate the request for exemption from the zoning ordinance and any other regulations in the Town of Merrimack. In addition, the issue for commission decision is the same whether the petitioner requests an exemption from the zoning ordinance or from any code or regulation, to wit: is the proposed situation of the structure in question reasonably necessary for the convenience or welfare of the public? Therefore, we find that there is no prejudice to any party arising from the requested consideration or the supplemental petition. The request will be granted.

Our order will issue accordingly.

ORDER

Upon consideration of the foregoing Report concerning Motions for Leave to Supplement Petition and for Consolidation, which is made a part hereof, it is hereby

ORDERED, that the motions of Manchester NECMA Limited Partnership for leave to supplement and for consolidation are granted.

By order of the Public Utilities Commission of New Hampshire this sixteenth day of February, 1988.

FOOTNOTES

[1]The petitioner avers that the F.C.C. requires the petitioner to be capable of serving 75 percent of its potential customers by September 16, 1989 and New Hampshire law requires public utilities to provide safe and adequate service.

[2]In *Applied* at 47, the Supreme Court overturned the Town of Merrimack planning board's denial of a site plan approval for a hazardous waste treatment facility because the denial had a direct exclusionary effect on the siting of the facility and thereby had a frustrating effect on the state regulation of hazardous waste.

[3]The language of RSA 374:30 I (Supp. 1987) gives planning boards authority to grant exemptions from ordinances, codes, and regulations where the structures are “necessary to furnish utility service for the public health, safety, or general welfare, and for which the utility's

said structure being a physically integrated component of the utility's transmission or distribution apparatus."

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NH.PUC*02/17/88*[51942]*73 NH PUC 63*Continental Telephone Company of Maine

[Go to End of 51942]

73 NH PUC 63

Re Continental Telephone Company of Maine

DE 88-14
Order No. 19,010

New Hampshire Public Utilities Commission

February 17, 1988

ORDER authorizing a telephone utility to change its name.

CORPORATIONS, § 1 — Corporate name change — Telephone utility.

[N.H.] Continental Telephone Company of Maine was authorized to change its name to Contel of Maine, Inc.; the commission determined that approval of the name change, which previously had been approved by the Office of the Secretary State, would be in the public good.

By the COMMISSION:

ORDER

WHEREAS, Continental Telephone Company of Maine (Company) filed with the commission on January 15, 1988 a tariff to change its name to, Contel of Maine, Inc.; and

WHEREAS, the change was approved by the Office of the Secretary of State January 1, 1988; and

WHEREAS, the commission finds it in the public good to approve such change; it is hereby

ORDERED, that Continental Telephone Company of Maine shall henceforth for the purposes of its tariff and doing business as a public utility in the State of New Hampshire be legally known as Contel of Maine, Inc.; and it is

FURTHER ORDERED, that the Company will re-file a Supplemental Tariff pursuant to N.H. Code of Administrative Rules 1601.05 (m)(1) c. and 1601.05 (m)(2).

By order of the Public Utilities Commission of New Hampshire this seventeenth day of February, 1988.

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NH.PUC*02/17/88*[51943]*73 NH PUC 63*Continental Telephone Company of New Hampshire

[Go to End of 51943]

73 NH PUC 63

Re Continental Telephone Company of New Hampshire

DE 88-15
Order No. 19,011

New Hampshire Public Utilities Commission

February 17, 1988

ORDER authorizing a telephone utility to change its name.

CORPORATIONS, § 1 — Corporate name change — Telephone utility.

[N.H.] Continental Telephone Company of New Hampshire was authorized to change its name to Contel of New Hampshire, Inc.; the commission determined that approval of the name change, which previously had been approved by the Office of the Secretary of State, would be in the public good.

By the COMMISSION:

ORDER

WHEREAS, Continental Telephone Company of New Hampshire (Company) filed with the commission on January 15, 1988 a tariff to change its name to Contel

of New Hampshire, Inc.; and

WHEREAS, the change was approved by the Office of the Secretary of State January 1, 1988; and

WHEREAS, the commission finds it in the public good to approve such change; it is hereby

ORDERED, that Continental Telephone Company of New Hampshire shall henceforth for the purposes of its tariff and doing business as a public utility in the State of New Hampshire be legally known as Contel of New Hampshire, Inc.; and it is

FURTHER ORDERED, that the Company will re-file a Supplemental Tariff pursuant to N.H. Code of Administrative Rules 1601.05 (m)(1) c. and 1601.05 (m)(2).

By order of the Public Utilities Commission of New Hampshire this seventeenth day of February, 1988.

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NH.PUC*02/23/88*[51944]*73 NH PUC 64*Great Bay Water Company, Inc.

[Go to End of 51944]

73 NH PUC 64

Re Great Bay Water Company, Inc.

DE 87-084
Order No. 19,015

New Hampshire Public Utilities Commission

February 23, 1988

ORDER granting petition for authority to operate as a water utility and for permanent rates.

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1. RATES, § 33 — Power to fix rates before operation begins — Temporary rates.

[N.H.] Temporary rates may not be granted until a company has received permission to operate as a public utility. p. 65.

2. CERTIFICATES, § 125 — Water service — Factors affecting grant of authority.

[N.H.] A petition for authority to operate as a water utility in a limited area was granted where it had been demonstrated that (1) there was a need for the service, (2) the petitioner was organized under the laws of the State of New Hampshire, and possessed both the financial ability and adequate facilities to provide the service, and (3) the facilities had received the approval of Water Supply and Pollution Control. p. 67.

3. RATES, § 595 — Water — Revenue requirement and rate design.

[N.H.] The revenue requirement and rate design of a water utility were determined pursuant to a stipulation agreement entered into between the utility and commission staff. p. 67.

APPEARANCES: Michael Donahue, Esq. of Donahue, McCaffrey, Sisemoore, and Tucker on behalf of Great Bay Water Company; Martin C. Rothfelder, Esq. on behalf of the staff of the Public Utilities Commission.

By the COMMISSION:

REPORT ON PETITION TO
OPERATE AS A PUBLIC UTILITY
AND FOR PERMANENT RATES

This report concerns the petition of Great Bay Water Company (Great Bay or the company) for permission to operate as a public utility and for permanent rates. The report details the procedural history of the case. It provides findings of fact and analysis. This report and order grants the requested authority and rates.

I. *Procedural History*

On May 5, 1987 Great Bay Water Company, Inc. filed a petition for authority to operate as a water utility in a limited area in the Town of Newmarket, New Hampshire under RSA 374:22. The service area will herein be referred to as the Turkey Ridge Development. In addition, Great Bay filed tariffs (under N.H. Admin. Code Puc § 1601.02) titled Great Bay Water Company N.H.P.U.C. No.1 and No.2 by which it requested approval of proposed terms and conditions of service and temporary and permanent rates for service pursuant to RSA 378:27 and 378:28 respectively. The proposed rates were designed to compensate the company for a rate base of $77,068 and a cost of capital of 12.11 percent.

On May 19, 1987 the commission issued an order of notice scheduling a hearing on the merits of the temporary rate petition and a prehearing conference on the issues of the permanent rates and franchising on July 14, 1987. At the July 14, 1987 hearing the commission addressed the issue of temporary rates as well as the merits of the petition for a franchise.

[1] By report and order no. 18,791 (August 18, 1987) the commission deferred a decision on these issues for the following procedural reasons. First, with respect to the request for authority to operate as a public utility, the company had not filed certain documents related to its compliance with the Water Supply and Pollution Control Division and the Water Resources Board requirements and the Town of New Market had not received adequate notice of the hearing pursuant to RSA 541-A:22. Second, concerning the temporary rates, temporary rates may not be granted until a company has received permission to operate as a public utility. The commission also established a procedural schedule in this report and order.

Pursuant to the procedural schedule, a hearing was held on November 17, 1987. The Town of Newmarket did not make an appearance at the hearing. A letter of the Newmarket board of selectmen was read into the record.

At the hearing the staff presented a stipulation agreement entered into between the staff and Great Bay. The stipulation was intended to dispose of the issue of permanent rates.

II. *Positions of the Parties*

The company argued that the commission should approve the petition for permission to provide service as a water utility. The staff did not support or oppose this petition but developed a record on many issues through cross-examination.

III. *Findings of Fact*

The following are the commission's findings of fact. For the purpose of clarity, these findings are divided into two sections: the findings relevant to the ability to provide service and the findings relative to the rate issue.

A. Ability to Provide Service

The company currently pumps and distributes water through a network in the Turkey Ridge area of Newmarket, New Hampshire. Its facilities consist of three wells (each with the ability to pump 42.5 gallons per minute), storage tanks, a pumping station, equipment structures and a distribution network.

The company will employ L.A. Hanna & Sons, Inc., to hook up all customers and oversee and perform all supervision and administration. L.A. Hanna & Sons will be on call 24 hours a day for maintenance and

repairs of the network and system.

The petitioner submitted evidence (Exhibit 7) that the Newmarket Board of Water Commissioners voted against the take-over of this water system. The Newmarket Board of Selectmen, by a letter dated November 12, 1987, indicated it believed that the town should have the sole authority "...to commit control of the municipalities water resources." (Record at 7). Since Newmarket never intervened in this proceeding or made an appearance, this letter was not presented in the form of sworn testimony nor was it subject to cross-examination. Further, Exhibit 5, Subdivision and Site Plan, indicates the Newmarket Planning Board's approval of the Turkey Ridge development that utilizes a private water system.

The company filed a document indicating the approval of Water Supply and Pollution Control. In addition, it filed a certification of compliance with the registration regulations of the Water Resources Division of the Department of Environmental Services.

B. Rates

On November 17, 1987 the parties reached a stipulation agreement on the issue of the request for permanent rates. The rates are intended to compensate the company for a revenue requirement of $18,910.

For the purpose of calculating the revenue requirement the parties stipulated that the rate of return would be calculated using a cost of common equity of 10 percent, a cost of debt of 10 percent, producing an overall cost of capital of 10 percent.

The rate of return was applied to the rate base of $23,453, to produce a required return of $2,345. This amount was added to the operating expenses of $16,565 to produce the revenue requirement of $18,910.

The pumping and distribution equipment are not included in the rate base as they were purchased for $1.00. The rate base was agreed to be a total of the following minus one year of depreciation ($931): a total meter cost of $13,640, a supply inventory of $500, organization expense of $8,314, and cash working capital of $1,930 (the operating and maintenance expenses times 12.5 percent[1(4)]). The following expenses were agreed to be appropriate:

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

Labor and Overhead	$5,000
Electric Expense	2,700

Telephone ($50 × 12)	600
Supplies	1,000
Legal and Accounting	1,000
Management Fee	2,640
Staff	800
Rents	1,500
Insurance	200
Depreciation (5%)	682
Amortization	249
Tax	194
Total Expenses	16,565

The taxes were calculated based on an equity ratio of 37.87 percent. An effective state and federal tax rate of 21.80 percent was utilized to produce the tax expense of $194.

The agreed rates for service were a minimum quarterly charge of $2.65 per customer and a consumption charge of $0.31 per 100 gallons. The minimum charge was developed by dividing the revenue requirement amount attributable to depreciation and amortization ($931) by the number of customers (88). The consumption charge was developed by dividing the remaining revenue requirement of $17,979 by the annual usage per customer — 66,000 gallons.

Page 66

The parties agreed to delete the originally proposed minimum service charge and the new customer hook-up charge. The parties stipulated to a five dollar charge for turning on service and a ten dollar meter test charge. The parties settled on a bad check charge of $5.00 or five percent of the face value of the check to comply with the commission's policy concerning bad checks. The parties have also agreed to the pro rating of bills should service become effective in the middle of a quarterly period.

VI. *Commission Analysis*

[2, 3] Based on the evidence presented, we find that the requirements of RSA 374:22 have been fulfilled and that the authority sought is in the public good. Therefore, we grant the requested permission. 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 (June 27, 1985) at 5 (70 NH PUC 563), 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. RSA 374:24.

The facts demonstrate that the petitioner is organized under the laws of the state of New Hampshire. The facts also show that there is a need for the service since the petitioner is currently providing service. The petitioner has also demonstrated its financial ability to provide service because of its historical ability to do so.

We find that the applicant will have adequate facilities to provide the service. These facilities have received the approval of Water Supply and Pollution Control.

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 the rate request petition. The rates will be effective as of the date of the order.

Our order will issue accordingly.

ORDER

Upon consideration of the foregoing Report on Petition to Operate as a Public Utility and for Permanent Rates, which is made a part hereof; it is hereby

ORDERED, that Great Bay Water Company, be and hereby is, authorized to operate as a public water utility in a limited area in the Town of Newmarket as described and shown on a map filed in this docket; and it is

FURTHER ORDERED, that Great Bay Water Company, shall file a tariff in compliance with this report and order that describes the terms and conditions of the water service provided and the rates for such service at $2.65 per quarter minimum charge and $0.31 per 100 gallons for all consumption; and it is

FURTHER ORDERED, that such tariff shall have its title page signed by the issuing company officer and bearing the notation: "Authorized by NHPUC Order No. 19,015 in case No. DE 87-084, dated February 23, 1988"; and it is

FURTHER ORDERED, that the tariff shall bear the effective date of this Order; and it is

FURTHER ORDERED, that pursuant to the stipulation presented in this docket, the rate case expense of $3,385.64 is hereby approved; and it is

FURTHER ORDERED, that Great Bay Water Co. file a tariff page calculating the

Page 67

surcharge for recovery of this expense over the next eight quarterly billing periods.

By order of the Public Utilities Commission of New Hampshire this twenty-third day of February, 1988.

FOOTNOTES

[1]This cash working capital formula is based on the FERC formula which has been accepted by the commission in other rate cases where there is no balance sheet and lead/lag study. It is the equivalent of 45 days of cash working capital.

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NH.PUC*02/23/88*[51945]*73 NH PUC 68*Resort Waste Services Corporation

[Go to End of 51945]

73 NH PUC 68

Re Resort Waste Services Corporation

DS 87-218

Order No. 19,016

New Hampshire Public Utilities Commission

February 23, 1988

ORDER granting, subject to conditions, petition for authorization to operate as a sewage disposal public utility.

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1. CERTIFICATES, § 73 — Grant of certificate — Conditions on approval — Sewage disposal utility.

[N.H.] Approval of an application for authorization to operate a member-owned, non-profit sewage disposal utility was made contingent upon (1) the applicant submitting information indicating what corporate entity would provide operating services, (2) the commission approving the operating ability of that entity, and (3) the commission approving rates for the provision of service. p. 70.

2. CERTIFICATES, § 125 — Grant of certificate — Factors considered — Sewage disposal utility.

[N.H.] A petition for authorization to operate a sewage disposal utility was conditionally granted where the facts demonstrated that (1) the petitioner was organized under the laws of the State of New Hampshire, (2) there was a need for the service, (3) the petitioner would have adequate facilities and financial resources to provide the service, and (4) the facilities had received the approval of Water Supply and Pollution Control. p. 70.

APPEARANCES: Martin L. Gross, Esq. and Peter Imse, Esq. of Sulloway, Hollis, and Soden on behalf of Resort Waste Services Corporation; Mary C.M. Hain, Esq. on behalf of the staff of the New Hampshire Public Utilities Commission.

By the COMMISSION:

REPORT

This report concerns the petition of Resort Waste Services Corporation (Resort Waste or the corporation) for authorization to operate as a sewage disposal public utility. The report details the procedural history of the case and the positions of the parties. It provides findings of fact and analysis and grants the requested authorization.

I. *Procedural History*

On November 9, 1987 Resort Waste, a corporation organized under RSA 292, filed a petition for authorization to operate as a sewer public utility pursuant to RSA 374:22 and 26. The commission issued an order of notice on November 20, 1987 scheduling a hearing on January 28, 1987

to investigate the petition.

II. *Positions of the Parties*

The corporation argued that the commission should approve the petition. The staff did not support or oppose the petition but developed a record concerning many issues through cross-examination.

The corporation argued that the requested authorization was in the public good for the following reasons, among others:

1. there is no sewer service provider in the proposed service area and service using septic tanks would not be feasible given the geology of the area,

2. the utility was designed to operate on a minimum revenue requirement - operating initially without capital cost, and

3. the corporation is a membership corporation, providing service only to members and operating without profit.

The corporation proposed to take depreciation on the original plant using the composite straight line method over the estimated 20 year life of the plant. The company argued that a depreciation expense is appropriate because there is a cost associated with the wear and tear of plant over the years. Accordingly, it avers that the generally accepted accounting principles would require that this cost be accounted for as depreciation. The staff questioned the use of depreciation in this manner because the conventional regulatory use of a depreciation expense is for the recovery of capital, and there is no capital investment in this case.

III. *Findings of Fact*

The applicant filed its articles of agreement and a certification that the articles have been filed with the Secretary of State of the State of New Hampshire. Resort Waste Services Corporation is a corporation organized under RSA 292 exclusively for the purposes of owning and operating a sewage treatment facility to serve owners of residential or commercial real estate units within the proposed service area. The service area is as described in the petition.

The petitioner intended to organize under the Internal Revenue Code in such a way that it will be recognized as a non-profit corporation for tax purposes. The applicant is awaiting a determination of the Internal Revenue Service concerning whether it is tax exempt under the Internal Revenue Code.

A subsurface septic system would not be appropriate for this development due to the steep slope of the land and the shallow ground water. The proposed system is very tolerant to flow variations. The treatment plant is designed and equipped with back-up power to insure the continuous provision of service in the event of a power failure. The plant is also equipped with various alarms that will automatically notify personnel responsible for taking corrective action in the event of an operating failure.

The original land will be contributed by Bretton Woods Acquisition Corporation and the plant for the project will be contributed by the Satter Companies of New England. There will be no equity or debt in the corporation at the outset. The corporation intends to account for the land at the estimated fair market value as of the date of the contribution, and the plant will be

recorded at the projected completion cost. During the initial operation of the facility, working capital will be provided by the

capacity control members.

The articles of agreement establish two types of ownership: user members (all owners of residential or commercial units) and capacity control members (the original owners and developers of the facility). User member status is automatic upon becoming an owner of a unit served by the utility. A unit is described as each structure or facility. The corporation will provide service to any and all persons who request service in the franchise area.

Capacity control members (CCM) have special rights and powers. Among these rights and powers are the power to expand the service territory and facilities, appoint agents for the corporation, grant user memberships, and contract financing. The CCMs have not made any agreement about when they will seek to increase the number of units approved by the Water Supply and Pollution Control Division. The CCMs also have the power to designate a majority of the board of directors until 50 percent of the approved units have been sold. The special rights and powers of the CCMs terminate when the CCMs decide that no further units can be served by the planned or expanded facilities. However, the obligation to pay operating and maintenance costs described in the following paragraph does not terminate until all approved units are sold.

The articles also provide that fees for use of the facilities shall be subject to the review of the commission. Residential usage fees will be based on a reasonable measure of usage per unit divided by the approved 300 units of system capacity. Commercial units shall pay, based on flow, based on a formula yet to be determined. Operating and maintenance costs not covered by user members will be paid by the CCMs.

Initial working capital will be provided by the CCMs. The Satter Companies will guarantee any letters of credit or other access to money necessary to ensure the availability of working capital.

Under the by-laws each member is entitled to one vote. Officers are elected by a majority of the board of directors after the initial 1988 term.

A one year warrantee runs from the Satter Companies to the corporation on the plant. If plant improvements are necessary they will be financed through debt.

The corporation has not yet contracted for operating services. The corporation stated that it will comply with the statutory requirements for public utilities. Applicable reports and records required of water utilities by the commission will be maintained by the Mount Washington Management Companies for Resort Waste Inc. Mount Washington Management will also respond to customer service calls. The board of directors and counsel will prepare rate filings for the commission.

The New Hampshire Water Supply and Pollution Control has approved the conceptual study and the preliminary plans of the system and facilities, pursuant to RSA 149-E.

Thirty condominiums that will take service from Resort Waste have been sold. The Satter

Companies are presently providing service to these customers by storing and hauling the sewage to the Town of Bethlehem.

IV. *Commission Analysis*

[1, 2] We find that the petition is supported by the evidence and should be granted provided that Resort Waste submits information indicating what corporate entity will provide operating services, and that we subsequently approve the operating ability of that entity.

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 (June 27, 1985) at 5 (70 NH PUC 563), 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. RSA 374:24.

The facts demonstrate that the petitioner is organized under the laws of the state of New Hampshire. The facts also show two reasons why there is a need for the service. First, the Satter Companies are providing store and haul service for existing customers. Second, septic tanks should not be utilized in this environment. However, in the absence of 300 completed residential units, we cannot affirm the need for a facility to serve that number of units. Therefore, this approval of a franchise is conditioned on the understanding that user members are responsible only for one three hundredth of the operation and maintenance costs and the balance will be provided by the capacity control members.

We find that the applicant will have adequate facilities to provide the service. These facilities have received the approval of Water Supply and Pollution Control. The financial ability required for the operation of the system will be available through the guarantees of the Satter Companies.

It should be noted that permission to operate is contingent on our approval of appropriate rates for the provision of service. By approval of this petition, we do not necessarily approve any of the rate or depreciation methodologies recommended by the corporation. These methodologies will be investigated at such time as the corporation files a request for rates.

Our Order will issue accordingly.

ORDER

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

ORDERED, that Resort Waste Services Corporation be, and hereby is, granted permission to construct the plant and other apparatus necessary for the provision of service provided that Resort Waste submits information indicating what entity will provide operating services, and we subsequently approve of the operating ability of that entity; and it is

FURTHER ORDERED, that permission as is otherwise required to provide service as a public utility is approved contingent upon our approval of rates for service; and it is

FURTHER ORDERED, that, pursuant to RSA § 374:15, Resort Waste submit all the filings and reports as the New Hampshire Public Utilities Commission shall from time to time require to

allow 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 RSA §§ 374:8, 10, and 15 respectively, and that pursuant to RSA § 363-A:1, *et seq.*, Resort Waste pay all assessments levied upon the corporation by the New Hampshire Public Utilities Commission, based on the amount of revenues received as a result of doing business in New Hampshire; and it is

FURTHER ORDERED, that Resort Waste file a complete description of the area to be served by metes and bounds or by an overlay to the tax map of the Town

Page 71

of Carroll or a similarly detailed map.

By order of the Public Utilities Commission of New Hampshire this twenty-third day of February, 1988.

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[Go to End of 51946]

73 NH PUC 72

Mardec, Inc.
v.
Public Service Company of New Hampshire

DC 88-026
Order No. 19,017

New Hampshire Public Utilities Commission

February 23, 1988; revised February 25, 1988

ORDER requiring an electric utility operating under the protection of the Bankruptcy Court to continue to render, without requiring additional payment, all utility services for which it had required prepayment.

SERVICE, § 47 — Enforcement of service obligation — Electric utility operating under the protection of the Bankruptcy Court.

[N.H.] An electric utility operating under the protection of the Bankruptcy Court was directed to continue to render, without requiring additional payment, all utility services for which it had required prepayment; specifically, the commission ordered that in each instance where a rate, fee, charge or deposit has been received by the utility for services to be rendered or as security for payment of future bills (which rates, fees, charges, or deposits were made pursuant to a rate order, regulation, or specific order of the commission) such service shall be rendered

without additional payment or such deposit shall be returned when due.

By the COMMISSION:

ORDER

WHEREAS, the Commission has been made aware of information which reveals that as a result of PSNH filing for protection pursuant to the United States Bankruptcy Code, PSNH has interrupted services to customers in the following circumstances.

Line Extensions. Although customers have paid to PSNH the appropriate charge for line extensions, PSNH has taken the position it cannot render the service unless it receives an additional charge in the same amount. The customer is treated as a general creditor for the first payment made.[1](5)

Small Power Producers Interconnection Fees. Although SPP has paid a charge to PSNH for an interconnection study necessary and required by the Commission, PSNH has taken the same position as above.[2](6)

Consumer Deposits. Although customers have paid deposits in order to secure service, those deposits have not been made available for redistribution in accordance with Commission rules and regulations.[3](7)

Budget Billing. Although we have not had any complaints regarding budget billing, we anticipate the same logic and rationale can be applied by PSNH and, therefore, will encompass budget billing in this report and order.

As noted in the footnotes all of the above services and the rates, fees or charges for said services were fixed by the Public Utilities Commission pursuant to its statutory authority, and have been part of the normal operations and within the normal course of business of the utilities prior to its filing of its bankruptcy petition.

The Bankruptcy Code recognizes that regulated industries require special treatment since vital necessary services must

be delivered to the public. Customers of a utility do not have a competitive marketplace to protect them and must rely on adequate state regulation.

The Commission is well aware that a utility operating under the protection of the Bankruptcy Court may confront complex and often conflicting positions between the Bankruptcy Code and the State regulators, and this Commission approaches the subject openly and in a spirit of cooperation. However, in regulated industries the captured customers must be protected and adequate, safe and reliable services must be available to them when such fees, rates, charges and deposits were fixed by the Commission through its regulations, tariffs or orders are forced upon them for services requested.

Since this order is in response to actions of PSNH to request additional funds from customers

for service for which PSNH was prepaid, we will fix the effective date of this order to be March 19, 1988 to allow an opportunity for any person who has an interest to address the subject of this order before the Commission; therefore, it is hereby

ORDERED, that in each instance where a rate, fee, charge or deposit has been received by PSNH for services to be rendered or as security for payment of future bills, which rates, fees, charges or deposits were made pursuant to a rate order, regulation or specific order of the Commission, and such service shall be rendered without additional payment or such deposit shall be returned when due; and it is

FURTHER ORDERED, that this order shall apply to all payments received by PSNH for prepaid services or deposits pursuant to an approved tariff regulation or order of the Commission.

By order of the Public Utilities Commission of New Hampshire this twenty-third day of February, 1988.

FOOTNOTES

[1]See complaint by MarDec, Inc. and Tariff NHPUC NO. 31, page 16.

[2]Complaints received by Economics Department and rate orders in Docket No. DR 83-62 and Docket No. DE 80-206.

[3]Complaints received by Consumer Assistance Division and Tariff NHPUC No. 31, page 7.

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NH.PUC*02/24/88*[51947]*73 NH PUC 73*Town of Jaffrey Water Works

[Go to End of 51947]

73 NH PUC 73

Re Town of Jaffrey Water Works

DR 87-46
Order No. 19,018

New Hampshire Public Utilities Commission

February 24, 1988

ORDER authorizing a municipal water utility to increase rates for service provided to customers located beyond its municipal limits.

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1. RATES, § 429 — Municipal water utility — Extraterritorial service — Commission jurisdiction.

[N.H.] The establishment of rates charged by a municipal water utility for service provided to customers located beyond its municipal limits falls within the purview of the commission. p.

74.

2. RATES, § 429 — Municipal water utility — Extraterritorial service — Rates based on projected cash needs.

[N.H.] Rates for extraterritorial service provided by a municipal water utility were based on a projection of the annual revenues necessary to sustain the utility on a cash basis; the commission noted that traditional rate-making does not establish rates based on a utility's cash needs, nevertheless, it found that such treatment was justified for a municipal utility that did not seek profits. p. 76.

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3. DISCRIMINATION, § 14 — Rates — Generally — Statutory provisions.

[N.H.] State statute RSA 378:10 provides that no public utility shall make any undue or unreasonable rate preference or advantage to any person or corporation or to any locality. p. 76.

4. RATES, § 429 — Municipal water utility — Extraterritorial service — Rate structure.

[N.H.] A municipal utility was authorized to increase rates for service provided to customers located beyond its municipal limits by a percentage far in excess of the increase in rates for customers located within the municipality; it was found that the disparity in the rate increase was justified because the customers located outside the municipal boundaries had not received an increase in 10 years, while rates for customers within the municipal boundaries had increased substantially during that last 10 years. p. 76.

5. RATES, § 429 — Municipal water utility — Extraterritorial service — Metered rates — Permanent customers.

[N.H.] A municipal water utility was directed to provide, within two years, metered service to all permanent customers located beyond its municipal boundaries and to charge such customers at the same metered rate charged to permanent residents of the municipality. p. 76.

6. RATES, § 429 — Municipal water utility — Extraterritorial service — Metered rates — Seasonal customers.

[N.H.] A municipal water utility was directed to provide, within five years, metered service to all seasonal customers located beyond its municipal boundaries. p. 76.

7. RATES, § 429 — Municipal water utility — Extraterritorial service — Turn-on and shut-off charges.

[N.H.] In accordance with its policy of attempting to ensure that customers pay equal rates for equal service, the commission set the turn-on and shut-off rates charged by a municipal water utility for service provided to customers located beyond its municipal boundaries at the same level as rates charged to customers located within the municipality. p. 78.

APPEARANCES: Donald Rich, Town Manager for the Town of Jaffrey, New Hampshire; Daniel Lanning and James Lenihan for the staff of the Public Utilities Commission.

By the COMMISSION:

REPORT

I. *HISTORY*

On March 20, 1987, the Town of Jaffrey, through its Water Works Department (Jaffrey), filed a Report of Proposed Rate Changes with the commission. On June 25, 1987, the commission held a duly noticed prehearing conference on the proposed rate changes. During said conference, the parties stipulated to a procedural schedule whereby an investigation into the merits of the case could be conducted. The commission adopted the parties' procedural schedule in its Order No. 18,645.

Accordingly, the commission held a duly noticed hearing on September 10, 1987 wherein Jaffrey presented five witnesses in support of its filing.

II. *JAFFREY'S POSITION*

A. *Revenue Requirement*

[1] Jaffrey Water Works is a municipal

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water system which serves approximately 156 customers in the neighboring town of Rindge, New Hampshire. Because these customers are located beyond the town limits, establishing their rates falls within the purview of this commission.

Jaffrey's originally filed Report of Proposed Rate Changes requested an increase of 238% for residential customers receiving water service in the Town of Rindge and 65% for commercial customers receiving water service in the Town of Rindge.

Rates for the Rindge customers have not increased since 1977 (See DR 77-109). Management of the Jaffrey Water Works explained that the hiatus between the last rate case and the instant rate case was caused by its decision to avoid the expense involved in obtaining an increase through the regulatory process (Transcript Re: DR 87-046 *Jaffrey Water Works,* September 10, 1987, page 74). Jaffrey avers that this expense would outweigh the petition for an increase, if Jaffrey applied for a change in rates every three years.

On August 7, 1987, Jaffrey filed a revised Report of Proposed Rate Changes asking for an increase of 241% for Rindge residential customers and 65% for Rindge commercial customers.

Both the original and revised rate changes were supported by a water rate study performed by Whitman & Howard, Inc. for the town of Jaffrey. This study examines Jaffrey's current (1986) cash position and projects cash needs through 1989. The study then develops rates on those cash needs. The cash needs were used in the study because the town runs and keeps its records on a cash basis. The projected annual cash needs presented by the town of Jaffrey were determined by combining annual operation and maintenance expenses and past debt and capital expenses identified in the Whitman and Howard Water rate study (Exhibit 1, of 3-10, Table 8). The projected costs were totaled for each year over a four year period ending in 1990 and then averaged to generate the required annual revenue for both the Jaffrey and Rindge customers.

According to the testimony of Mark J. Devine, P.E. engineering consultant with Whitman and Howard, (Tr. at 11) "...there is no profit that is trying to be generated by the Jaffrey Water Works. They are simply trying to project what their expenses are going to be and therefore set rates that would meet those expenses over a reasonable period of time."

The total annual increase in revenues requested by Jaffrey Water Works as specified in its August 4, 1987 revised Report of Proposed Rate Changes is $174,540. This represents a proposed increase of 53 percent over existing annual revenue of $331,896. The projected operation and maintenance cost increases were presented in Table 6 of Exhibit 1. In lieu of depreciation, Jaffrey Water Works uses debt service (Tr. at 39): "...the other capital expenses which go from 1987 through 1990..., are simply the total of the existing bond issues and the payments that are required each year to meet those bond payments."

B. *Rate Structure*

Jaffrey Water Works presently serves approximately 1160 residential and 125 commercial and industrial customers within its municipal boundaries. Jaffrey also serves 155 residential customers and one commercial customer in Rindge (located outside the boundaries of Jaffrey).

According to the information provided by the petitioner, the customers in Jaffrey are metered. The rate structure for the Jaffrey customers includes a $28 minimum

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charge covering the costs of meter reading and billing. Additionally, the first 20,000 gallons annually (5,000 gallons/quarter) is billed at a flat rate of $60 a year or $15 per quarter. All water consumed above 20,000 gallons per year is billed at a uniform consumption rate of $.33 per 100 gallons. This rate structure, one of several proposals provided in the Whitman Howard study (Exhibit 1), was chosen by Jaffrey and put into effect for the Jaffrey customers on April 1, 1987. (Tr. at 16)

With the exception of the one metered commercial customer in the area of Rindge, the 155 residential customers are provided service on a flat fixture rate for which there is a schedule applicable to annual as well as seasonal customers (Table 1, p. 2-11 of Exhibit 1). The average 1985 annual revenue Jaffrey estimates from a residential Rindge customer is $55.94.

The petitioner proposes to increase the rates charged to Rindge customers by 241%. This increase was determined by an analysis of a single master meter which supplies 56 residences of the total 156 Rindge customers. Only 16 of the 56 customers were identified as seasonal customers, the remaining 40 customers in the sample were identified as year round customers. The total consumption was used to determine a seasonal consumption figure.

III. *COMMISSION ANALYSIS*

A. *Revenue Requirement*

[2] Regarding the water rate study prepared by Whitman & Howard, we have reviewed the costs therein establishing the projected annual revenues necessary to sustain Jaffrey Water Works on a cash basis. The proposed annual increase in revenues of $174,540 constitutes an overall 53 percent increase over present rates. Traditional ratemaking normally does not

establish rates based on a utilities cash needs, current or forecasted. However, the commission believes that Jaffrey is not a typical utility in that Jaffrey is a municipality and a municipality generally does not seek profits as would a publicly or privately held utility. Furthermore, Jaffrey has not requested that the commission approve a rate increase since 1977.

B. *Rate Structure*

[3-6] Regarding equality of rates, RSA 378:10 provides that "no public utility shall make — any undue or unreasonable preference or advantage to any person or corporation or to any locality ..."

The customers served in the town of Rindge are located outside the municipal boundaries of Jaffrey. In petitioning this commission for an increase in rates, Jaffrey proposes increases to its various customer classes as follows:

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

Class or Service	*Requested % of rate increase*	*No. of Customers*
Domestic (Jaffrey)	31%	1157
Commercial and Industrial (Jaffrey)	62%	125
Rindge Residential	241%	155
Rindge Commercial	65%	1

The Rindge residential customers clearly are being assigned a percentage increase in rates far in excess of the overall revenue

increase requested by the utility for its own customers. However, testimony reveals that over a period of some ten years, Rindge customers have received no rate increases and their rates have remained at $56.00 per year, while during that period Jaffrey's rates have increased to an average level of $126.00 per year.

Finally, the utility is assigning the increase on a consumption analysis which lacks complete information. The petitioner has the burden of proving the necessity of a rate increase. RSA 378:8.

The record does not provide a sound analytical basis to formulate year round or seasonal rates, albeit this analysis was offered to substantiate the rates assigned to the 155 non-metered Rindge residential customers.

Q. Has the commission been provided with any data which would actually show seasonal customer consumption by only those customers requesting service less than 12 months, or let me rephrase that, six months.

A. No, because that data does not exist. Tr. at 67

The average metered residential consumption in Jaffrey was used to develop non-metered, flat rates for both seasonal and year-round customers in Rindge. These proposed rates reflect little basis for cost justification for Rindge customers.

The utility contends that the alternative would be to offer the Rindge customer metered rates

equal to those of the Jaffrey customers. This would require the installation of meters at an estimated cost of up to $1,250 per customer. This expense is not sufficient justification to deny the customers of Rindge the opportunity to be provided service at a metered rate equal to that charged the customers in Jaffrey.

We have consistently found that metered service is preferable to non-metered service. We find that the permanent residents of Rindge should be provided service on the same basis as the permanent residents of Jaffrey. We will require that, within two years from the date of this order, all permanent customers in Rindge will have been provided metered service. As each customer becomes metered they shall be charged at the same metered rate as is a permanent resident of Jaffrey. During this period of transition to metered rates, unmetered permanent customers shall be charged at the rate of $195.00 per year, which we accept as being the average annual cost to provide service to permanent Jaffrey customers. This average bill will be prorated through the period in which metered service is installed. Permanent customers shall be identified as those who request no turn-on or shut-off action during the year.

With regard to Rindge's seasonal customers, we are cognizant of the Company's estimate of meter installation costs which could reach $1,200 per customer. We continue to find that metering is necessary, and we will require that Rindge's seasonal customers shall be ultimately metered, but we will allow the Company a five-year period of time in which to have them installed.

We find no evidence in the record to support a position whereby an unmetered seasonal customer would use the same quantity of water as an unmetered permanent customer. We will not, therefore, support a position which allows unmetered seasonal customers to pay the same rates as the permanent customers. We will, rather, set a rate of $112.00 as the appropriate seasonal rate, that rate being approximately 100% of the current Rindge

rate. This rate shall remain in effect for seasonal customers during the period that this order remains in effect, or until meters are installed. As in the case with permanent customers, bills will be prorated at the time of the meter installation. Meter installation charges to Rindge customers, if applicable, will be made on the same basis as those to Jaffrey customers.

[7] One remaining issue concerns the turn-on and shut-off charges to customers. The Company contends that Jaffrey customers currently pay $20.00 for each such charge, and they propose to charge Rindge customers $10.00 for each such service. We find such treatment inconsistent. In accordance with our previously stated policy of attempting to assure that customers pay equal rates for equal service, we will require that customers of Rindge pay turn-on and shut-off rates equal to those charged to Jaffrey customers — which in this case shall be $20.00.

Our Order will issue accordingly.

ORDER

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

ORDERED, that the proposed rate increase assigned to the residential customers served in

the town of Rindge be and hereby is rejected; and it is

FURTHER ORDERED, that Jaffrey Water Works submit revised tariff pages for the residential Rindge customers in accordance with the foregoing report effective the date of this order and bearing this commission's order number (1601.05k); and it is

FURTHER ORDERED, that Jaffrey Water Works give public notice of the new rates by publishing same in a newspaper having general circulation in the territory served.

By order of the Public Utilities Commission of New Hampshire this twenty fourth day of February, 1988.

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NH.PUC*02/24/88*[51948]*73 NH PUC 78*New Hampshire Electric Cooperative, Inc.

[Go to End of 51948]

73 NH PUC 78

Re New Hampshire Electric Cooperative, Inc.

Additional petitioner: Exeter and Hampton Electric Company

DE 87-194
Order No. 19,019

New Hampshire Public Utilities Commission

February 24, 1988

ORDER approving exchange of electric service territories.

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1. MONOPOLY AND COMPETITION, § 29 — Division of territory or service field — Territorial agreements — Extensions into service territory of another.

[N.H.] A utility may construct or extend its facilities and offer to provide service to customers in the service territory of another utility when they are requested to do so by the company serving that service territory; moreover, the commission may alter existing service territories if, after notice to all interested parties and hearing, the commission finds that the alteration is consistent with the public interest. p. 80.

2. MONOPOLY AND COMPETITION, § 28 — Division of territory or service field — Exchange of service territories.

[N.H.] In deciding whether to allow two utilities to exchange service territories the commission is required to consider: (a) existing service areas; (b) voluntary agreements between the

utilities; (c) consistency with the orderly development of the region; (d) natural geographical boundaries; (e) compatibility with the interests of consumers; and (f) other relevant factors. p. 80.

3. MONOPOLY AND COMPETITION, § 29 — Division of territory or service field — Territorial agreements — Exchange of service territories — Electric utilities.

[N.H.] A joint petition of two electric utilities to exchange portions of their service territories was granted as in the public interest where (1) the companies had agreed to the exchange, (2) the exchange was found to be consistent with the orderly development of the region and with consumer interests because it would allow all the residents of a housing development to be served by one utility, (3) the service territories to be given up by the companies were contiguous with existing service territories, and (4) no consumers objected to the exchange. p. 80.

APPEARANCES: Earl Hanson on behalf of the New Hampshire Electric Cooperative; Glenn Appleton on behalf of Exeter and Hampton Electric Company; and Arthur Johnson on behalf of the staff of the Public Utilities Commission.

By the COMMISSION:

REPORT

This report concerns the joint petition of New Hampshire Electric Cooperative, Inc. and Exeter and Hampton Electric Company for authority to change service territories in the towns of Danville, Kingston, and Brentwood. The report details the procedural history of the case, provides findings of fact, and analysis. This report and order approves the proposed change of territories.

I. *Procedural History*

On October 9, 1987, the New Hampshire Electric Cooperative, Inc. (Co-op) and Exeter and Hampton Electric Company (Exeter and Hampton) filed a joint petition pursuant to RSA 374:22-a and c for authority to change service territories in the towns of Danville, Kingston, and Brentwood. The change was requested to allow the Co-op to fill the request for service of Frank Caparco to the Twin Bridges development in Danville, New Hampshire.

On October 16, 1987, the commission issued order no. 18,874 (72 NH PUC 496) scheduling a hearing on the petition on February 9, 1988. General publication of the petition and the hearing date was made by newspaper and the seven existing customers were notified by certified mail. The hearing on the merits was held pursuant to the commission's order. At the hearing, the Co-op and Exeter and Hampton argued in favor of the approval of the petition.

II. *Findings of Fact*

The New Hampshire Electric Cooperative and Exeter and Hampton Electric Company are authorized to provide electric utility service in the towns of Danville, Kingston, and Brentwood. The Co-op received a request from Frank Caparco for service to the Twin Bridges development in Danville. The development consists of twelve units. The Co-op has authority to service one half of the development and Exeter and Hampton has authority to serve the other half.

Exeter and Hampton and the Co-op entered into an agreement to facilitate the requested service. The Co-op agreed to

provide service to all of the Twin Bridges development and to forfeit its six existing customers on South Road in the towns of Brentwood and Kingston. Exeter and Hampton agreed to relinquish its seven customers in the Twin Bridges development and to provide service to the Co-op's six existing customers on South Road in the towns of Brentwood and Kingston. The service areas to be gained by each of the companies are contiguous to their existing service areas. The two companies have agreed to build the tie lines or line extensions necessary for the provision of service.

III. *Commission Analysis*

[1-3] A company may construct or extend its facilities and offer to provide service to customers in the service territory of another company when they are requested to do so by the company serving that service territory. RSA 374:22-c. In addition, the commission may alter existing service territories if after notice to all interested parties and hearing, the commission finds that the alteration is consistent with the public interest pursuant to RSA 374:22-a. When deciding whether to allow two companies to exchange service territories the commission is required to consider:

(a) existing service areas;
(b) voluntary agreements between two companies;
(c) consistency with the orderly development of the region;
(d) natural geographical boundaries;
(e) compatibility with the interests of consumers; and
(f) other relevant factors.
Id.

The proposed exchange of service territories is consistent with the public interest. The companies have agreed to exchange the service territories. The exchange is consistent with the orderly development of the region and with existing service areas and is compatible with consumer interests because it will allow all of the residents in one development to be served by the same utility and the service territories to be given up by the companies are contiguous with existing service territories. No consumers appeared in opposition to the exchange. There are no natural geographic boundaries involved in this exchange.

The companies also agreed to file revised maps of their service territories within 60 days from the issuance of a commission order allowing the exchange.

Our order will issue accordingly.

ORDER

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

ORDERED, that the joint petition of New Hampshire Electric Cooperative and Exeter and Hampton Electric Company to exchange service territories, as further described in the foregoing report is approved; and it is

FURTHER ORDERED, that Exeter and Hampton Electric Company and the New Hampshire Electric Cooperative, Inc. shall file revised service territory maps containing the service territories as revised in the foregoing report describing the areas to be served by metes and bounds or by overlays to the tax maps of the Towns of Danville, Kingston, and Brentwood or similarly detailed maps; and shall specify thereon that the maps are effective on the date of this order by authority of the above NHPUC order no.

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By order of the Public Utilities Commission of New Hampshire this twenty-fourth day of February, 1988.

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NH.PUC*02/24/88*[51949]*73 NH PUC 81*Merrimack County Telephone Company

[Go to End of 51949]

73 NH PUC 81

Re Merrimack County Telephone Company

DR 88-016
Order No. 19,020

New Hampshire Public Utilities Commission

February 24, 1988

ORDER revising the paging service tariff of a local exchange telephone carrier.

RATES, § 533 — Telephone — Personal paging service — Tariff revision.

[N.H.] The personal paging service tariff of a local exchange telephone carrier was revised to remove therefrom a nonrecurring personal paging service fee which was erroneously left in the tariff and replace it with the correct service charge and associated charges.

By the COMMISSION:

ORDER

WHEREAS, on January 25, 1988 Merrimack County Telephone Company (Merrimack) filed with the commission a revision of its tariff NHPUC No. 7 — Telephone, Part VIII — Personal Paging Service, Section 1, Page 2, Third Revision proposed to be effective February 25, 1988; and

WHEREAS, the purpose of the revision is to remove a nonrecurring fee of $20 which was erroneously left in its tariff issued December 1, 1987 and replace it with the correct Element 1 and 2 Service Charge when Consumer Premises Equipment (CPE) and associated charges; and

WHEREAS, upon review of the tariff the commission finds the revision to be consistent with the public good; it is hereby

ORDERED, that Merrimack County Telephone Tariff NHPUC No. 7 — Telephone, Part VIII — Personal Paging Service, Section 1, Page 2, Third Revision is approved effective February 25, 1988; and it is

FURTHER ORDERED, that Merrimack submit annotated tariffs as required by Puc 1601.05(k) conforming to this order.

By order of the Public Utilities Commission of New Hampshire this twenty-fourth day of February, 1988.

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NH.PUC*02/25/88*[51950]*73 NH PUC 81*Southern New Hampshire Water Company

[Go to End of 51950]

73 NH PUC 81

Re Southern New Hampshire Water Company

Additional petitioner: Manchester Water Works

DE 87-217
Order No. 19,021

New Hampshire Public Utilities Commission

February 25, 1988

ORDER approving a distributing water utility's wholesale water and construction contracts with a retail water utility.

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1. RATES, § 625 — Water — Wholesale to distributors — Contract.

[N.H.] A wholesale water contract was approved between a distributing water utility

and a retail water utility where minimum payment to the distributing utility based upon either estimated consumption or source development charge would be subject to annual refund if the actual daily flow was less than the estimated daily flow; the contract differed from previously approved wholesale contracts in that it provided for the payment of a source development charge for each gallon of volume consumed. p. 84.

2. WATER, § 12 — Construction and equipment — Improvements to distribution system — Allocation of costs — Construction agreement.

[N.H.] Where the total water purchased from a distributing water utility by a retail water utility exceeded three million gallons per day, the retail utility would pay a portion of the cost of improvement of the distribution system, the cost to be reviewed and approved by the commission; the construction agreement would authorize the retail utility to be reimbursed on a pro rata basis if another customer used any portion of the connections for which the utility had paid. p. 84.

3. RATES, § 625 — Water — Wholesale to distributors — Contracts.

[N.H.] A water distribution utility's wholesale water contract and construction contract proposals departing from the rates fixed in the schedule of general application were approved where service would be provided to a retail water utility at rates that were substantially the same as other outstanding wholesale contracts of the distributing utility. p. 84.

4. WATER, § 12 — Construction and equipment — Allocation of main costs — Construction agreement.

[N.H.] A distributing water utility's construction agreement with a retail water utility was authorized where a hydraulic analysis of the specific main capacity required at any given metric point would be performed to determine the provision of service and the cost of service to be charged the retail utility; the retail water utility would be responsible only for the pipe capacity necessary to meet its requirements. p. 84.

APPEARANCES: Dom S. D'Ambruoso, Esq. of Ransmeier and Spellman on behalf of Southern New Hampshire Water Company; Richard A. Samuels, Esq. of McLane, Graf, Raulerson and Middleton on behalf of Manchester Water Works; Joseph Rogers, the Assistant Consumer Advocate; and Mary C.M. Hain, Esq. on behalf of the staff of the New Hampshire Public Utilities Commission.

By the COMMISSION:

REPORT

This report concerns the petition of Manchester Water Works for approval of a wholesale water contract and a construction contract for service to Southern New Hampshire Water Company. The report details the procedural history of the case. It provides findings of fact and analysis. This report and order approves the proposed contracts.

I. *Procedural History*

On October 30, 1987 Manchester Water Works (Manchester) filed a proposed wholesale

water contract and construction contract with Southern New Hampshire Water Company (Southern New Hampshire) pursuant to RSA 378:19 and N.H. Admin. Code Puc §1601.02. The proposed agreements would provide service to Southern New Hampshire at rates other

than those rates fixed in Manchester's schedule of general application. By an order of notice issued November 19, 1987 the commission scheduled a hearing to determine whether or not the departure from the general schedule would be just and consistent with the public interest under RSA 378:18.

II. *Positions of the Parties*

Manchester and Southern New Hampshire supported the contracts asserting that the rates contained in the contracts are substantially identical to existing wholesale water and construction agreements between Manchester and the Central Hooksett Water Precinct, and between Manchester and the Town of Derry (as approved in commission dockets DE 83-290 and DE 83-207 respectively). They averred that the contracts are cost based and are, therefore, just and consistent with the public interest. The companies also argued in favor of the contracts as a necessary component to the development of a regional water system. The staff did not support or oppose the contracts, but raised several issues through testimony and cross-examination.

The staff pointed out that none of the other outstanding wholesale contracts contain the merrimack source development charge (MSDC). By way of explanation, the commission approved the MSDC for application to retail rates by report and order no. 18,628, in docket DR 86-80 (April 6, 1987). The MSDC is described in this order as a capital charge, contribution in aid of construction, or an availability charge that is calculated to pay for the development of a new water source required to extend service to and within new franchise areas. The MSDC is not intended to be used for the operation or maintenance of facilities or plant. *Id.* at 4-5.

In the present case, the staff questioned whether it was appropriate to apply the same source development charge to wholesale customers as retail customers. The company contended that the costs of developing a water supply apply equally to wholesale and retail service. The staff argued that there may be different costs related to the hydraulics involved in the services.

The staff argued that the construction agreement should contain cost responsibility only for the size main that Southern New Hampshire requires at a given meter point. For example, the staff asserts that, the agreement provides for the extension of a 16 inch main in Hooksett where only an 8 inch extension is necessary. Manchester stated that it needs to conduct a hydraulic analysis of the specific requirements of Southern New Hampshire to determine the size of the main necessary for the distribution system.

The staff also produced an opinion of the commission dated August 12, 1983 concerning Pennichuck Water Works that stated that when a customer requests a line extension, he or she should be required to pay only for the size of main necessary to meet his or her needs. The opinion finds that if there is excess plant installed, the utility will recover its costs upon the installation of new customers.

Section 304 of the construction agreement states that when the combined total of water

purchased from Manchester by Southern New Hampshire under the contract exceeds 3.0 million gallons/day (MGD), Southern will pay a portion of the costs of improvements made to the Manchester distribution system. The staff recommended that this section of the contract should contain a statement that the cost

allocation shall be reviewed and approved by the commission. Manchester and Southern New Hampshire agreed to comply with this request.

Section 307.1 of the wholesale water agreement provides that certain minimum payments, based on estimated consumption, shall be required for the period of 1989 through 1998. The staff recommended that any payments in this section or in section 307 based on estimated consumption be subject to rebate if the actual daily flow is less than the estimated daily flow.

III. *Findings of Fact*

The proposed wholesale water contract is for the sale of up to 2.1 million gallons a day for a period of 20 years, commencing January 1, 1989. The first ten years of the contract reflect an anticipated schedule of usage leading to a total estimated usage of slightly over one million gallons per day at the end of the ten year period.

The proposed wholesale water contract price per million gallons is substantially the same as all other Manchester Water Works wholesale water agreements. The contract is different from formerly approved wholesale water contracts in that it provides for the payment of a Merrimack source development charge for each gallon of volume consumed. The proposed rates increase or decrease in proportion to commission ordered retail rate increases or decreases. The payment of the MSDC under the contract will be triggered on the same terms that the MSDC is triggered under the retail tariff.

The proposed construction agreement requires Southern New Hampshire to pay all the costs incurred in connection with construction. It is substantially the same as all other outstanding Manchester Water Works construction agreements. Southern New Hampshire will be entitled to be reimbursed on a *pro rata* basis if Manchester serves any customer using any portion of connections for which Southern New Hampshire has paid.

Southern New Hampshire attempted to negotiate but was unable to conclude a contract with Pennichuck Water Works to obtain an alternative source of supply to the Manchester wholesale supply agreement.

IV. *Commission Analysis*

[1-4] The commission reaches the conclusion that the proposed contract is just and consistent with the public good and, therefore, allows it to go into effect. The primary analysis required in this case is: is the departure of the contract rates from Manchester's retail tariff rates just and consistent with the public interest? RSA 378:18.

The contract's departure from the tariffed rates is just and consistent with the public interest because it is substantially the same as the other outstanding wholesale contracts approved as cost based by this commission in dockets DE 83-290 and DE 83-207. In addition, the commission

approved the MSDC as cost based in docket DR 86-80.

The record shows that at this time, a water supply from Manchester is the most economical source of the options available for Southern's needs in Londonderry. Therefore, we will approve the contract, subject to the above-stated changes which the parties agreed to, to wit: 1) that Manchester and Southern will perform hydraulic studies to determine the main size capacity necessary for the provision of service to and to be charged to Southern, and Southern will bear the cost responsibility

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for only the pipe size necessary to meet its needs; and 2) that any cost allocation made to determine the responsibility of Southern for improvements made to the Manchester distribution system be submitted to this commission for prior approval. We will further require that any excess payments made by Southern under Section 307, the Merrimack River Source Development Charge; shall be subject to annual refunds if actual consumption is less than the estimated amount billed.

Our Order will issue accordingly.

ORDER

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

ORDERED, that with the exceptions contained in the foregoing report the Wholesale Water and Construction Agreements are approved for effect as of the date of this order.

By order of the Public Utilities Commission of New Hampshire this twenty-fifth day of February, 1988.

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NH.PUC*02/26/88*[51951]*73 NH PUC 85*Westwood of Wolfeboro

[Go to End of 51951]

73 NH PUC 85

Re Westwood of Wolfeboro

DE 87-238
Order No. 19,022

New Hampshire Public Utilities Commission

February 26, 1988

ORDER nisi authorizing a municipal electric department to construct and maintain electric and cable television lines under and across state-owned railroad property.

ELECTRICITY, § 6 — Wires and cables — Crossing under and across state-owned railroad

property — Authorization — Municipal electric department.

[N.H.] A municipal electric utility was authorized to construct and maintain electric and cable television lines under and across state-owned railroad property where (1) the utility had a pending application before the Department of Transportation's Bureau of Railroads for a license to place lines across the property, (2) the utility had obtained necessary approvals from the Department of Environmental Services, and (3) the lines were necessary for the provision of electric and cable television service to the affected area; the grant of authority was conditioned upon the public having an opportunity to object and upon all construction conforming to the requirements of the National Electric Safety Code.

By the COMMISSION:

ORDER

WHEREAS, on November 25, 1987, counsel for Westwood of Wolfeboro filed on behalf of that company a petition seeking license under RSA 371:17 for the placement and maintenance of utility plant under and across State-owned railroad property in Wolfeboro, New Hampshire; and

WHEREAS, said filing included a draft of the Department of Transportation's Bureau of Railroads license, processing of which was deferred pending decision under RSA 371:17; and

WHEREAS, said filing also included necessary approvals from the Department of Environmental Services' Water Supply and Pollution Control Division and Wetlands Board; and

WHEREAS, all construction will meet the requirements of each of these agencies; and

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WHEREAS, the Commission finds said crossing will not affect substantially the public rights in said land; and

WHEREAS, such license is necessary for providing electric and cable television service to the affected area; and

WHEREAS, the Commission also finds that the public good demands that it be given an opportunity to respond in support of, or in opposition to this petition; it is

ORDERED, that all persons interested in responding to this petition of Westwood of Wolfeboro be notified that they may submit their comments in writing and/or file a written request for public hearing on the matter before this Commission no later than March 11, 1988; and it is

FURTHER ORDERED, that Westwood of Wolfeboro 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 March 4, 1988 and designated in an affidavit to be made an a copy of this order and filed with this Commission; and it is

FURTHER ORDERED, NISI, that Westwood of Wolfeboro, the Municipal Electric Department of Wolfeboro, and Lakes Cablevision of Laconia NH be, and hereby are, granted

license under RSA 371:17 et seq to construct and maintain electric and cable television lines under and across State-owned railroad property in Wolfeboro, New Hampshire as depicted in drawings on file with this Commission and further identified as being in the vicinity of Railroad Station 3 + 93 ¿±; and it is

FURTHER ORDERED, that all construction conform to requirements of the National Electrical Safety Code as well as the requirements of the agencies cited herein; 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-sixth day of February, 1988.

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NH.PUC*03/01/88*[51952]*73 NH PUC 86*New England Hydro-Transmission Corporation

[Go to End of 51952]

73 NH PUC 86

Re New England Hydro-Transmission Corporation

DSF 85-155
Second Supplemental Order No. 19,024

New Hampshire Public Utilities Commission

March 1, 1988

ORDER nisi accepting the proposed allocation of a “host state bonus” granted to New Hampshire participants in the New England/Hydro Quebec electric transmission project.

ELECTRICITY, § 3 — Interconnected systems — New England/Hydro Quebec transmission project — Allocation of benefits — Host state bonus.

[N.H.] The proposed allocation of a “host state bonus” granted to New Hampshire participants in the New England/Hydro Quebec electric transmission project was conditionally accepted as reasonable; (the “host state bonus” provision of the New England/Hydro Quebec electric transmission agreement entitles New Hampshire to receive an additional 5% of the benefits of the project above its normal allocation in return for being the host state); final acceptance of the proposed allocation was conditioned upon the public receiving notice of the proposal and having an opportunity to respond.

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, 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 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.]

NH Participant	Allocation of NH Host 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, Supplemental Order No. 18,884 (order) issued on October 22, 1987 (72 NH PUC 512) ordered NISI that the proposed allocation be approved effective November 11, 1987 unless a timely request for hearing is received; and

WHEREAS, the order required that notice of this approval be given via registered mail and by one time publication no later than November 4, 1987; and

WHEREAS, NEHT asserts that it did not receive a copy of the order and therefore was not able to comply with the order's notice requirements; 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 March 14, 1988 and be documented by affidavit filed with this commission on or before March 21, 1988, 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 March 20, 1988; and it is

FURTHER ORDERED, *NISI* that the allocation of the 5% host state bonus as given above is approved effective March 21, 1988 unless a timely request for hearing is received.

By order of the Public Utilities Commission of New Hampshire this first day of March, 1988.

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NH.PUC*03/07/88*[51953]*73 NH PUC 88*Pennichuck Water Works

[Go to End of 51953]

73 NH PUC 88

Re Pennichuck Water Works

DR 87-167
Order No. 19,027

New Hampshire Public Utilities Commission

March 7, 1988

ORDER approving special contract for water utility service.

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1. RATES, § 211 — Special contract rates — Grounds for approval — Statutory standard.

[N.H.] Under New Hampshire law RSA 378:18, the commission may approve special rate contracts only if special circumstances exist which render departure from general tariff schedules just and consistent with the public interest. p. 90.

2. RATES, § 597 — Water — Deviation from general schedules — Special contract — Condition on approval.

[N.H.] The commission approved a special contract for the provision of water service, which deviated from the general schedules of the utility in that the municipality to be served under the contract would not be required to pay most of the costs associated with the plant required for the provision of service and, instead, would pay a low annual fee which would be credited for sales to the municipality or to third party customers; it was found that the municipality's past problems with securing a reliable source of water constituted a special circumstance justifying approval of the contract; nevertheless, the commission put the utility on notice that its management would be required to bear the risk of any stranded investment that might result in the event that the municipality is unable to fulfill its contractual obligations. p. 90.

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i. RATES, § 597 — Water — Deviation from general schedules — Special contract — Risk to ratepayers.

[N.H.] Statement, in separate opinion dissenting in part, that the majority erred in approving a special contract for the provision of water utility service to a previously unserved municipality; the dissenting commissioner argued that the terms of the contract did not effectively insulate current ratepayers from the risks involved in departing from general tariff schedules and that the utility had not demonstrated that existing ratepayers would benefit from the contract; the commissioner concluded that the utility should be required to renegotiate the contract to assure that the municipality is obligated to a fixed payment that covers both the interest and principal costs of the financing required to construct the plant needed to provide service to the municipality. p. 90.

APPEARANCES: Mary Ellen Kiley, Esquire of Gallagher, Callahan & Gartrell for Pennichuck Water Works; Steven V. Camerino, Esquire of McLane, Graf, Raulerson & Middleton for Southern New Hampshire; and Martin C. Rothfelder, Esquire for the New Hampshire Public Utilities Commission.

By the COMMISSION:

I. *Introduction and Summary*

This report and the order attached hereto considers and approves a contract between Pennichuck Water Works (Pennichuck) a regulated utility, and the town of Milford, New Hampshire. The report and order approves the contract, but indicates the concern over the risks inherent in this type of contract.

II. *Procedural History*

This case began on September 2, 1987 when Pennichuck Water Works filed with the commission the contract it had entered into with the town of Milford. Pursuant to an order of notice issued on September 24, 1987, as amended by a revised order of notice issued October 23, 1987 and further revised by a letter from the commission's secretary dated October 9, 1987, a hearing was held on November 24, 1987 at 10:00 a.m. At that time, the commission granted the October 16, 1987 motion of Southern New Hampshire Water Company to intervene, despite the oral objection of Pennichuck and its written objections filed October 21, 1987. As noted on the record, the commission also received correspondence from the town of Milford indicating its support for the contract.

II. *Commission Analysis*

Based on the record before us, the commission makes the following findings of fact. On June 8, 1987, the town of Milford, a municipal corporation established and existing under New Hampshire state law and Pennichuck Water Works, a New Hampshire corporation that is a regulated utility, entered into the proposed contract that initiated this docket. The contract provides for sales to Milford by Pennichuck at the tariffed water rate, but deviates from the

requirements of the Pennichuck tariffs that require contributions toward plant installed to serve a particular customer. The particular tariff provisions requiring contributions appear in the section of Pennichuck's tariff on the terms and conditions as subsections entitled “Booster Service” and “Main Pipe Extensions”.

In lieu of the contribution toward the investment required under the tariffs, the agreement provides for a minimum payment by Milford of $102,000 per year payable in equal monthly installments for the fifteen year term of the contract. That payment would be reduced by fifty cents for each dollar of revenue received by Pennichuck for the sale of water to Milford or to “third party customers”. The contract defines the “third party customers” as “customers located on land abutting any public road containing [the transmission main necessary for service to Milford]”. Such credits shall be developed on a monthly basis without opportunity for carry-over of any excess credits to succeeding months.

The $102,000 annual payment by Milford is based on the 1.15 million dollars of the investment necessary for this project. Specifically, it is for an interconnecting pipeline that would be from the west side of Nashua along Route 101-A to a pump station on the east side of Milford. In addition, the 1.15 million dollars is designed to include pumping and metering equipment on the east side of Milford. The financing for the project is assumed to be 1.15 million dollars under a thirty year mortgage type bond with a thirty year amortization at an interest rate of 8%. The company admits that other plant is associated with the service, but did not include that plant in the calculation.

The contract clearly binds Pennichuck for a 15 year period. Pennichuck anticipates that the investment associated with this contract will become part of its rate base.

The record reflects that Milford has had great difficulty in securing a water supply. Milford lost its Savage well to contamination in 1984. In 1985, its Keyes well was also lost to contamination. The Savage well has been sold by Milford. The Keyes well is still owned by Milford and is under evaluation for potentially providing water service to Milford. At the present time,

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Milford is in the unfortunate position of having to rely on just one well for its water supply.

At past Milford town meetings the voters have turned down various proposals for water supply including approving interconnections outside of town and exploring new wells in town. According to the company, the town of Milford requires a two-thirds approval of the voters to make such commitments.

[1, 2] Under New Hampshire law, the commission should approve this contract only “if special circumstances exist which render the contracts departure from [Pennichuck's general schedules] just and consistent with the public interest”. RSA 378:18. Under the contract, Milford pays the standard tariff water rates and therefore, there is no deviation from that rate. Instead, the deviation from the general schedules is a deviation from the portions of the Pennichuck tariffs on terms and conditions for “Booster Service” and for “Main Pipe Extensions”. If that tariff was applied to Milford, Milford would pay for most of the costs of the plant associated with its service. Instead, under the contract, they are required to pay a much lower annual fee which is

credited for sales as discussed above. By this deviation from the general schedules of Pennichuck, the company or its current customers (depending upon regulatory treatment) face more risk.

The commission believes that the history of Milford's situation reflects that they have been through a long and difficult process of attempting to secure a reliable source of good quality water. It is because of these special circumstances of Milford that the commission finds it reasonable to approve this contract. The commission is, however, concerned with the shift of risk away from Milford that is discussed above. The commission will not allow that shift to be on Pennichuck's other ratepayers.

The commission is concerned that stranded investment may result in the event that Milford cannot fulfill its contractual obligations. Therefore, the commission puts the company on notice that the management decision to service this contract will also incur the burden for any stranded investment.

Our order will issue accordingly.

ORDER

Based upon the foregoing report, which is incorporated herein by reference; it is hereby

ORDERED, that the special contract between Pennichuck Water Works and the town of Milford is approved as detailed in the foregoing report.

By order of the Public Utilities Commission of New Hampshire this seventh day of March, 1988.

Separate Opinion of
Commissioner Bisson

[i] I concur with my colleagues that the provision of wholesale water to the Town of Milford by Pennichuck Water Works, Inc. is in the public good. However, I cannot concur in their approval of the terms of the specific contract before us.

The Agreement, as written, requires significant departure from Pennichuck's existing tariff provisions for booster service and for main pipe extensions “in view of the unusual amount and type of water service desired by Milford and the investment which must be made by the petitioner to render such service” (Exhibit 1). The Agreement requires Pennichuck to fully finance the proposed pipeline. In contrast, the existing tariff requires that when

substantial transmission plant is necessary to provide a particular customer with service, that customer is required to pay for most of such plant. The tariff provides such customer with rebates of payments for the plant should other customers subsequently utilize that same plant. These provisions generally protect the company and its ratepayers from exposure in situations where a relatively high investment is required to serve a particular customer.

Further, the Agreement clearly delineates significant annual constraints on the revenue stream from Milford to Pennichuck which place unnecessary risks on both the stockholder and the ratepayers of the company.

Of particular issue in the June 8, 1988 Agreement (Exhibit 2) is item 3 which details the payment plan:

> 3. ...Commencing on the date that water service is first available to Milford, and continuing for fifteen (15) years thereafter, Milford agrees to pay a minimum fixed amount of not more than $102,000 per year in equal monthly installments to the Company in consideration of the Company's incurring the cost of constructing and installing the transmission main, booster station and related equipment and in consideration of its agreement to stand ready to provide supplemental water service to Milford. However, it is noted and agreed upon by Milford and the Company that this annual payment is entirely contingent upon an appropriation voted at Annual Town Meetings and Milford's commitment is so controlled. In the event that no appropriation is approved at the Annual Town Meeting, Milford is held harmless and is not bound by the constraints of this Agreement. The execution of this agreement shall not be construed as to bind Milford on more than a year to year basis even though it is the intent of Milford to participate in the Agreement for fifteen (15) years after the date that water service is first available to Milford from the Company.

The town of Milford is served by the Milford Water Department which operates as a municipal utility, partially under the supervision of the PUC, and provides service to certain customers in the town of Milford and, to a limited degree, in the town of Amherst. Pennichuck Water Works, Inc. is a regulated utility with franchise areas that include the City of Nashua, a limited area of Merrimack, and several community water systems in East Derry and Plaistow. As Milford is not part of its current franchise area, Pennichuck does not have the same duty to provide service and to commit debt or equity capital to transmission improvements as does the company in its franchised areas.

Through correspondence from the Board of Selectmen (Exhibit 4), the record demonstrates that the town of Milford requires a supplemental source of water service and that, after a thorough analysis of the alternatives, the Board selected the Pennichuck option “as the most cost-effective long term solution for the populace of Milford.”

The record further indicates through Mr. Densberger's testimony that Pennichuck will fully finance the 1.15 million (planning estimate) required for construction by increasing its long term debt, most preferably through the State Industrial Development Board Authority. Although such a debt instrument will be binding on Pennichuck, the contract revenue stream from Milford to service this debt and to contribute to principal reduction is not secure,

despite the intentions of the principals to renew annually by a Town Meeting vote. The record does not address how such debt financing may affect Pennichuck's current debt/equity ratio and debt coverage ratio.

The record reflects considerable discussion regarding possible “third party water sales” from the pipeline to augment revenue. However, as 1) the requisite franchise rights to permit such sales are the subject of another docket, 2) representations of possible terms of such potential contracts were indefinite, and 3) Pennichuck represents the Agreement to be financially viable

without third party sales, this potential revenue source should not be a significant factor in determining approval of the specifics of the contract now before us.

The testimony of Mr. Densberger indicates that Milford's difficulty in reaching financial agreements necessary to resolve water issues stems from the fact that many in the town of Milford do not receive water from the town water system and that expenditure of such monies requires a two-thirds town vote. The record reflects, however, that Milford could create a village district to encompass those residents served by the town water system and thereby avoid the problem of assessing for water those who do not receive water from the town. Such a water district could issue bonds and thereby pay the substantial up front costs that could be required under the application of Pennichuck's tariffs or under the principles that the tariff is based upon.

My colleagues justify departure from the tariff and address the contractual weakness in the revenue stream by serving notice that the company “will also incur the burden for any stranded investment.” It is unclear to me that in excess of one million dollars could be excluded from the rate base of a company of this size without affecting the costs of debt and equity financing. Should excluding this plant from rate base and from recovery through rates affect the allowed cost of equity or debt to this company, the ratepayers clearly are not shielded from the risk. Further, this underlying contractual weakness is within our jurisdiction to remedy at the current, rather than future, time.

Pennichuck has developed an effective operational response to Milford's need for a safe and adequate supplemental source of fresh water. However, the Agreement, in its present form, requires the company to assume risk normally excluded by its tariffs. Pennichuck has not shown that ratepayers can be effectively insulated from the risks involved in departing from the tariff in this manner, nor has it demonstrated any benefits to current ratepayers.

Therefore, I believe that Pennichuck should renegotiate the Agreement with Milford to assure that, at minimum, Milford is obligated to a fixed payment that covers both the interest and principal costs of the financing required to construct the plant. Any lesser amount transfers, through depreciation, the capital cost of the project to Pennichuck's other ratepayers, should Milford's anticipated usage fall short of the estimate. Thus, while I approve Pennichuck's request to provide wholesale water to Milford, I must respectfully dissent from my fellow commissioners in their approval of all of the terms of the contract.

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NH.PUC*03/09/88*[51954]*73 NH PUC 93*Pennichuck Water Works, Inc.

[Go to End of 51954]

73 NH PUC 93

Re Pennichuck Water Works, Inc.

DR 87-53
Order No. 19,028

Re Hampton Water Works Company

DR 87-164
Order No. 19,028

New Hampshire Public Utilities Commission

March 9, 1988

ORDER dismissing, without prejudice, petitions to provide water utility service.

CERTIFICATES, § 158 — Generally — Petition to provide utility service — Grounds for dismissal — Ripeness.

[N.H.] Petitions by two water utilities for permission to provide service to a municipality were dismissed without prejudice as not yet ripe for consideration where one utility had withdrawn its petition, the other had agreed to postpone its petition, and the municipality had stated that it intended to conduct a town-wide water resource study.

PARTIES: Pennichuck Water Works, Inc.; Hampton Water Works; Town of Stratham; and staff of the New Hampshire Public Utilities Commission.

By the COMMISSION:

REPORT

I. Procedural History

On March 27, 1987, Pennichuck Water Works, Inc. (Pennichuck), filed a petition to establish a water public utility in a limited area (the Pheasant Run Development) in the Town of Stratham, N.H. which was docketed as DR 87-53. By an order of notice dated April 14, 1987, the commission scheduled a prehearing conference on June 18, 1987.

At the prehearing conference, the parties presented a procedural schedule. By order no. 18,749 the commission approved this procedural schedule and scheduled a hearing on the merits for September 22-25, 1987.

On August 26, 1987, Hampton Water Works Company (Hampton), filed a petition to establish a water public utility in the Town of Stratham, N.H. which was docketed as DE 87-164. By an order of notice in DE 87-164, dated September 15, 1987, the commission consolidated dockets DR 87-53 and DE 87-164 pursuant to N.H. Admin. Code Puc 203.07 since both petitioners requested permission to provide water utility service in the Town of Stratham. This order scheduled a prehearing conference in lieu of the scheduled hearing on the merits on October l, 1987. At the prehearing conference, the parties proposed a new procedural schedule.

By report and order no. 18,927, the commission approved the procedural schedule and allowed the unopposed intervention of the Town of Stratham. This order scheduled a prehearing conference on February 3, 1988, and a hearing on the merits on February 17, 1988.

On the date of the prehearing conference the parties met in an off the record negotiations meeting. As a result of this meeting Hampton filed a letter memorializing an oral agreement of

the parties that the petition of Hampton Water Works, except the portion of the petition to serve the Pheasant Run Development, would be indefinitely postponed without prejudice and that the parties would not oppose reactivation of this petition.

On February 16, 1988, Pennichuck filed

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a letter that withdrew its petition in response to the objection to the petition by the Town of Stratham. On February 16, 1988, Hampton filed a letter memorializing an agreement among the parties to indefinitely postpone Hampton's entire petition without prejudice. The parties also agreed not to oppose reactivation of the petition. In its original petition to intervene, the Town of Stratham stated that the town is planning to request a town-wide water resource study at its March town meeting.

It appears from the above-mentioned circumstances that the petition of Hampton is not yet ripe for consideration. Therefore, rather than leave this docket open unless and until Hampton seeks to reactivate the petition, we find that it is in the interest of administrative efficiency to close this combined docket without prejudice.

Our order will issue accordingly.

ORDER

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

ORDERED, that the petitions of Pennichuck Water Works, Inc. and Hampton Water Works Company to provide water utility service in the town of Stratham, New Hampshire are dismissed without prejudice.

By order of the Public Utilities Commission of New Hampshire this ninth day of March, 1988.

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NH.PUC*03/10/88*[51955]*73 NH PUC 94*New Hampshire Electric Cooperative, Inc.

[Go to End of 51955]

73 NH PUC 94

Re New Hampshire Electric Cooperative, Inc.

DE 87-190
Order No. 19,030

New Hampshire Public Utilities Commission

March 10, 1988

ORDER nisi authorizing an electric cooperative to maintain electric service and radio facilities on and across state-owned land.

ELECTRICITY, § 6 — Electric service and radio facilities — Authority to cross state-owned land — Electric cooperative.

[N.H.] An electric cooperative was conditionally authorized to maintain electric service and radio facilities on and across state-owned land where the maintenance of such facilities was deemed necessary to meet the reasonable requirements of service to the public; authorization was conditioned upon compliance with the terms and conditions required by other state agencies and upon the public being offered an opportunity to respond.

By the COMMISSION:

ORDER

WHEREAS, on September 30, 1987, the New Hampshire Electric Cooperative, Inc. filed with this commission, a petition for the right to construct and maintain certain radio facilities which petition was revised, amended and refiled with the commission on January 25, 1988 to request a license to maintain radio transmitter facilities on Mt. Kearsarge in Warner, New Hampshire, and further to provide electrical service to its summit; and

WHEREAS, the following agencies, in

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addition to the Company, have been identified as requiring such electrical service; the Federal Aviation Administration, the New Hampshire Division of Forests & Lands, the New Hampshire State Police, the Federal Bureau of Investigation, the New Hampshire Department of Transportation, New Hampshire's Department of Fish & Game, National Guard, U.S. Army Corps of Engineers, New Hampshire Public Television, and New England Power Company and other parties operating under permit of the New Hampshire Department of Resources and Economic Development, Division of Forests & Lands; and

WHEREAS, the Cooperative's communication facilities are licensed by the Federal Communications Commission; and

WHEREAS, the commission has previously issued similar licenses to the Petitioner in DE 3027 on July 17, 1950 and in DE 5894 on July 17, 1970; which latter license expired on July 17, 1980 under an automatic expiration provision; and

WHEREAS, pursuant to NH RSA 371:17, the Cooperative seeks to obtain (1) a new license to maintain radio transmitter facilities for itself; and (2) to provide electrical service for this purpose and for the purpose of serving the needs of the above-noted State and Federal agencies and permittees, and such parties as may be granted permits in the future by the State of New Hampshire; and

WHEREAS, due to State required changes in the physical layout of the facilities at the summit of Mt. Kearsarge, the Petitioner does not seek to only revive the previously expired

license but seeks approval for a new license specifically addressing the proposed change in layout of the facilities and provision of electrical services to the summit; and

WHEREAS, the Cooperative has stated that a copy of the petition including attachments has been sent to all potential electric power users at Kearsarge Mountain; and

WHEREAS, the Division of Forests & Lands for the New Hampshire Department of Resources and Economic Development has consented to the Cooperative's request made by the petition; the consent specifically notes support of a no fee permanent license for the electrical services, subject only to a right of reversion to the State should the mountain top facilities be removed and the line abandoned; and further, that the consent is conditioned upon the Petitioner's compliance with, and observance of, the conditions set forth in the Division's "Special Use Permit" dated September 15, 1987, a copy of which was filed with the Cooperative's Petition; and

WHEREAS, the commission finds that the State of New Hampshire is in agreement with the Petitioner's request for the extension of electrical services to the summit of Mt. Kearsarge and the maintenance of certain radio facilities at said summit, subject to the terms and conditions set forth in the Special Use Permit of the Division of Forests & Lands for the New Hampshire Department of Resources and Economic Development dated September 15, 1987, which terms and conditions are expressly made a part of the Commission's Order, and further is in agreement that a no fee permanent license subject to a right of reversion in the State of New Hampshire in the event that the mountain top facilities should be removed and the line abandoned, should be granted; and

WHEREAS, the commission further finds that the extension of electrical services to the summit of Mt. Kearsarge to serve the entities identified by the

Petitioner, including the facilities of the Petitioner, and the maintenance of radio facilities by the Petitioner for its use are necessary in order to meet the reasonable requirements of service to the public; 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 March 21, 1988; 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 17, 1988 and documented by affidavit to be filed with this office on or before March 30 , 1988; and it is

FURTHER ORDERED, *NISI* that authority be granted, pursuant to NH RSA 371:17, to the New Hampshire Electric Cooperative, Inc. to maintain, without charge to the Cooperative, a radio transmitter and associated facilities including essential electrical lines extended to the top of Mt. Kearsarge in the Town of Warner on the property of the State of New Hampshire to serve the facilities of the Governmental Agencies and Companies at said site as identified in the

Cooperative's Petition; 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 tenth day of March, 1988.

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NH.PUC*03/16/88*[51956]*73 NH PUC 96*New England Telephone and Telegraph Company

[Go to End of 51956]

73 NH PUC 96

Re New England Telephone and Telegraph Company

DR 88-24
Order No. 19,035

New Hampshire Public Utilities Commission

March 16, 1988

ORDER authorizing a local exchange telephone carrier to revise its measured service tariff.

SERVICE, § 433 — Telephone — Measured service — Tariff revisions — Local exchange carrier.

[N.H.] A local exchange telephone carrier was authorized to revise its "measured service — four element" tariff for the purposes of (1) reorganizing and clarifying the current offering, (2) updating the list of serving exchanges, and (3) correcting a reference to associated charges for dormitory communications service.

By the COMMISSION:

ORDER

WHEREAS, on February 16, 1988, New England Telephone and Telegraph Company (NET) filed a revision of its NHPUC No. 75 Parts A and C for the purposes of 1) reorganizing and clarifying the current offering of Measured Service — Four Element (MS-4E), 2) adding Derry to the list of serving exchanges for the Chester municipality, 3) deleting Manchester as a serving exchange for the Auburn municipality, and 4) correcting a reference to associated charges for Dormitory Communications Service; and

WHEREAS, the proposed Measured Service — Four Element (MS-4E) tariff is

identical in substance to the existing NET NHPUC No. 75, Parts A and G and greatly clarified for the purposes of administration; and

WHEREAS, the proposed inclusion of Derry in the list of serving exchanges for the Chester municipality makes the Municipal Calling Service (MCS) tariff consistent with its historical administration; and

WHEREAS, retaining Manchester as a serving exchange for the Auburn municipality has become unnecessary because of the September 25, 1987 provision of extended local service between Manchester and Chester; and

WHEREAS, the reference to associated tie line rates for Dormitory Communications Service will be corrected by properly referencing the said charges; and

WHEREAS, on February 16, 1988 New England Telephone and Telegraph Company also filed a Request for Waiver by the commission of Sections Puc 1603 and 1601.05 (J); it is hereby

ORDERED, that New England Telephone and Telegraph Company's request for waiver of Sections Puc 1603 and 1601.05 (J) is hereby granted; and it is

FURTHER ORDERED, that NHPUC No. 75 tariff be, and hereby is, revised as follows:

Part A, Section 5 — Page 1 — Fifth Revision of Table of Contents — Supersedes Fourth Revision

Page 8, Twelfth Revision supersedes Eleventh Revision
Page 9, Tenth Revision supersedes Ninth Revision
Page 9.1, Sixth Revision supersedes Fifth Revision
Page 10, Ninth Revision supersedes Eighth Revision
Pages 11, 12 and 13, First Revision supersedes Originals,
Page 14, Second Revision supersedes First Revision
Pages 15, 16 and 17, First Revision supersedes Originals
Page 18, Second Revision supersedes First Revision
Page 19, Twelfth Revision supersedes Eleventh Revision
Page 20, Eleventh Revision supersedes Tenth Revision
Page 20.1 through 20.16, Seventh Revision supersedes Sixth Revision

Page 21, Tenth Revision supersedes
Ninth Revision
Page 21.1, Fourth Revision supersedes
Third Revision
Page 22, Seventh Revision supersedes
Sixth Revision
Page 23, Sixth Revision supersedes
Fifth Revision
Pages 29.1 through 29.3 Eighth Revision supersedes Seventh Revision
Page 35, Third Revision supersedes
Second Revision

Section 7 — Page 4, Second Revision supersedes First Revision

Page 29, Eighth Revision supersedes
Seventh Revision
Page 77, Third Revision supersedes
Second Revision
Page 82, Seventh Revision supersedes
Sixth Revision
Page 84, Third Revision supersedes
Second Revision

Part C, Section 5 — Pages 2 and 6, Second Revision supersedes First Revision

Section 6 — Page 11, Second Revision supersedes First Revision;

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and it is

FURTHER ORDERED, the New England Telephone and Telegraph Company 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 and Telegraph 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 every page of the above tariff revision shall be annotated as follows:

Authorized by NHPUC Order No. 19,035, signed March 16, 1988; and it is

FURTHER ORDERED, that this order shall be effective March 17, 1988.

By order of the Public Utilities Commission of New Hampshire this sixteenth day of March, 1988.

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NH.PUC*03/21/88*[51957]*73 NH PUC 98*JHP Partnership

[Go to End of 51957]

73 NH PUC 98

Re JHP Partnership

DE 87-136
Order No. 19,036

New Hampshire Public Utilities Commission

March 21, 1988

ORDER granting request for permission to conduct business as a cellular telecommunications public utility.

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1. CERTIFICATES, § 88 — Factors affecting grant or refusal — Public convenience and necessity.

[N.H.] State statute RSA § 374:26 provides that permission to operate as a public utility shall be granted only if it would be in the public good and not otherwise; the criteria for determining the public good are (1) the need for service, and (2) the ability of the applicant to provide service. p. 100.

2. CERTIFICATES, § 76 — Factors affecting grant or refusal — Organization of business — Compliance with state laws.

[N.H.] State statute RSA § 374:24 provides that a business must be organized under the laws of the state of New Hampshire to receive the commission's permission to operate as a public utility. p. 100.

3. CERTIFICATES, § 101.1 — Cellular telecommunications service — Factors affecting grant of certificate.

[N.H.] A petition for permission to conduct business as a cellular telecommunications public utility was granted where the petitioner had demonstrated that it was organized under the laws of the state of New Hampshire, and was financially, managerially, and otherwise able to provide service. p. 101.

APPEARANCES: Dom D'Ambruoso, Esq. of Ransmeier and Spellman and David Hill, Esq. of Shack, Buntzel, and Hill on behalf of JHP Partnership; Thomas Platt III, Esq. of Orr & Reno on behalf of Manchester NECMA Limited Partnership; Mary Hain, Esq., Daniel Lanning, and Edgar Stubbs on behalf of the staff of the Public Utilities Commission.

By the COMMISSION:

REPORT

This report concerns the hearing on the

merits of the petition of JHP Partnership (JHP) for permission to provide cellular mobile radio telecommunication service as a public utility in the State of New Hampshire. This report and order sets forth the procedural history, provides findings of fact, and grants the petition for permission to provide service.

I. *Procedural History*

On July 15, 1987, JHP Partnership, a New Hampshire partnership formed by Robert H. Pelissier, Jalal Hashtroudi, and United States Cellular Corporation of New Hampshire (USCCNH) applied pursuant to RSA 374:22 (1984), for permission to commence business as the cellular mobile radio telecommunications nonwireline carrier for the Manchester-Nashua, New Hampshire, New England County Metropolitan Area (NECMA) in the State of New Hampshire, or in the alternative, for exemption from regulation by the Public Utilities Commission (commission or P.U.C.). Pursuant to an order of notice issued August 26, 1987, a hearing was scheduled on October 5, 1987, and then continued to October 20, 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, JHP 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.

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. JHP and other parties filed a motion for a rehearing of the *Phase I* decision on October 15, 1987. The commission issued order no. 18,903 on November 17, 1987 (72 NH PUC 525), denying the motion. A duly noticed hearing on the merits of the petition for permission to operate as a public utility took place on October 20, 1987.

At the hearing JHP stated that it would file, as a late filed exhibit, documentation showing that it was organized as a domestic corporation or a domestic partnership. It also agreed to file a prospectus that United States Cellular Corporation (USCC) had filed with the Securities and Exchange Commission (SEC) for a public offering that describes the various sources of financing available to the partnership.

On October 23, 1987, JHP filed USCC's “Preliminary Prospectus dated September 8, 1987, Subject to Completion.” On February 19, 1988, JHP filed the first amendment to the amended and restated partnership agreement of JHP Partnership, to demonstrate that it is now formed as a New Hampshire partnership pursuant to the provisions of RSA 304-A.

II. *Positions of the Parties*

The partnership took the position that it is managerially, financially, and technically capable

of providing service and that the F.C.C. has already determined that there is a public need for the proposed service. The Staff did not take a position as to JHP's capability.

III. *Findings of Fact*

The commission makes the followings findings of fact based on the record in this

proceeding.

The petitioner holds a permit from the F.C.C. issued March 25, 1987, for the construction of a cellular mobile radio telecommunications system for the proposed service area. JHP has filed sufficient information to show that it is intended to be a partnership organized under the laws of the State of New Hampshire. The partners of JHP Partnership are Robert A. Pelissier, Jalal Hashtroudi and United States Cellular Corporation of New Hampshire. United States Cellular Corporation of New Hampshire is a subsidiary of United States Cellular Corporation. United States Cellular Corporation is a subsidiary of Telephone and Data Systems, Inc., a public company providing various communications services.

JHP Partnership has experience in the construction, operation, and management of cellular systems through United States Cellular Corporation of New Hampshire. The partnership has several sources of financing available to it, as are further described in the securities prospectus. The initial construction and operating costs will be approximately three million dollars. These costs will be paid for with equity contributions, equipment vendor financing, and bank or other financial institution credit.

United States Cellular Corporation will be responsible for construction and operation of the JHP system under a management agreement pursuant to plans and budgets approved by the partnership. USCC will devise and implement a marketing plan

JHP will establish an office in the Manchester/Nashua area. The office will be staffed with one or more customer service representatives, an administrator, and a sales manager. The Manchester office manager will be responsible for customer service including billing inquiries, order processing, and resolution of customer problems.

In addition, there will be one technical staff person on location. That technical person will be backed up by USCC's regional and corporate technical staff as well as independent technicians hired on an as needed basis. The manufacturer of the switch and the radio equipment will also be available to provide technical support as needed.

USCC will provide the bookkeeping and accounting services under the management contract. The partnership will also hire an outside accounting firm to provide audited reports.

JHP is a party to a settlement and option agreement which provides that certain other parties to the agreement (approximately 150) who filed applications with the F.C.C. for the Manchester/Nashua NECMA permit will share 49.9% of the equity of the enterprise. JHP intends to form a limited partnership with these parties in which JHP is the general partner. The limited partners will have no voice in management of the partnership. JHP intends to assign the authority granted to it by the New Hampshire Public Utilities Commission to the limited

partnership.

IV. *Commission Analysis*

[1, 2] 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. We find that the petition is supported by the evidence and should be granted.

The language of §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 (June 27, 1985) at 5 (70 NH PUC 563), 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 (72 NH PUC 445), 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 FCC 2d 469, 503-505. 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 the applicant.

Re International Generation and Transmission Co., Inc., 67 NH PUC 478, 484 (1982).

[3] Based on the foregoing findings of fact, we find that JHP has demonstrated that it is financially, managerially, legally, and otherwise able to provide service and construct facilities to provide the service. JHP 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.

We would also like to remind JHP 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.

JHP shall file any assignment of the rights granted in its permission to do business as a public utility (pursuant to RSA 374:30) and such assignment will be reviewed by this commission.

Our order will issue accordingly.

ORDER

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

ORDERED, that JHP Partnership be, and hereby is, granted permission to do business as the nonwireline carriers of cellular radio telecommunications services in the Manchester-Nashua, New England County Metropolitan Area; and it is

FURTHER ORDERED, that pursuant to RSA §374:15, JHP 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.*, JHP 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-first day of March, 1988.

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NH.PUC*03/22/88*[51958]*73 NH PUC 102*Bryant Woods Water Company, Inc.

[Go to End of 51958]

73 NH PUC 102

Re Bryant Woods Water Company, Inc.

DE 87-226
Order No. 19,037

New Hampshire Public Utilities Commission

March 22, 1988

ORDER requiring a water company to file an amended petition for authority to establish a water utility.

CERTIFICATES, § 125 — Water — Factors affecting grant of certificate — Compliance with the requirements of other state agencies.

[N.H.] State statute RSA § 374:22 III. (supp 1987) provides that no water company shall obtain the permission or approval of the commission to operate as a public utility without first satisfying any 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; the commission found that the statutory provisions should be read to require a company to meet the requirements of the Division of Water Supply and Pollution Control and the Division of Water Resources, which are the successor agencies to the Water Supply and Pollution Control Commission and the Water Resources Board; accordingly, a water company was directed to amend its petition for authority to operate as a public utility to include a statement of facts relevant to meeting the requirements of the Division of Water Supply and Pollution Control and the Division of Water Resources.

By the COMMISSION:

REPORT REGARDING PETITION

On November 16, 1987 Bryant Woods Water Company, Inc. filed a petition for authority to establish a water utility in a limited area in the town of Atkinson, New Hampshire. On January 5, 1988 the commission issued an order of notice setting a prehearing conference in this matter for February 10, 1988. That order of notice required that the petitioner cause publication of that notice to occur no later than January 25, 1988 and file an affidavit regarding such publication on or before February 10, 1988.

On February 10, 1988 the company and the commission staff appeared before the commission. At that time, the petitioner admitted that it had not caused publication to occur as required by the order of notice and thus had caused no affidavit of publication to be filed with the commission.

At the February 10, 1988 proceeding, the staff moved that the petition be dismissed because the company did not have the approval from the Water Supply and Pollution Control Division of the New Hampshire Division of Environmental Services (DES) as required by RSA Section 374:22 (supp. 1987). The company, however, alleged that it did have the necessary approvals. The petition does not document such approvals or state any facts related to such approvals.

RSA Section 374:22 III. (supp. 1987) provides as follows:

> No water company shall obtain the permission or approval of the commission to operate as a public utility without first satisfying any 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.

Pursuant to RSA 21-0:4 and RSA 21-0:6, the Water Supply and Pollution Control Commission and the Water Resources Board have been replaced by the Division of Water Supply and Pollution Control and the Division of Water Resources within DES. Thus, RSA 374:22 III. (1987 Supp) should be read such that these successor entities within DES are considered rather than the commission and board referenced therein. Further, these statutes would indicate that the commission must explicitly find that a petitioner seeking to provide water service has satisfied

any requirements of the Department of Environmental Services Water Supply and Pollution Control Division and Water Resources Division prior to granting authorization to act as a public utility providing water service.

Commission rules require that all petitions include “a concise and explicit statement of the facts upon which the commission is expected to rely in granting authorization or relief”. N.H. Admin. Rules, Puc 204.01 (a) (3). Pursuant to the discussion of above, the commission must have facts before showing a petitioner's ability to satisfy any applicable requirements of the Water Supply and Pollution Control Division and the Water Resources Division of DES prior to granting authority to operate as a water utility. Since the rule indicates that there must be a statement of facts on which the commission is expected to rely, a petition for a water utility must state facts relevant to meeting the requirements of the Water Supply and Pollution Control Division and the Water Resources Division of DES. In the absence of such information, it would be appropriate for the commission to dismiss such petitions.

Rather than dismiss this case, the commission shall allow the petitioner to, within thirty days of the date of the order attached hereto, file a petition which includes “a concise and explicit statement of the facts upon which the commission is expected to rely in granting” the approval sought here. Such statement should include, but not necessarily be limited to, the facts relating to the petitioner's ability to meet any of the requirements of the Water Supply and Pollution Control Division and the Water Resources Division of DES. Absent such an amended petition, the commission will dismiss the petition. On the other hand, should such a petition be filed, the commission will once again schedule a hearing and require the petitioner to provide appropriate notice.

Our order shall issue accordingly.

ORDER

Based upon the foregoing REPORT REGARDING PETITION, which is incorporated herein by reference; it is hereby

ORDERED, that the petitioner herein shall file an amended petition that complies with commission rules as is further addressed in the foregoing report.

By order of the Public Utilities Commission of New Hampshire this twenty-second day of March, 1988.

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NH.PUC*03/22/88*[51959]*73 NH PUC 104*New England Telephone and Telegraph Company, Inc.

[Go to End of 51959]

73 NH PUC 104

Re New England Telephone and Telegraph Company, Inc.

DR 86-241
Supplemental Order No. 19,039

New Hampshire Public Utilities Commission

March 22, 1988

ORDER authorizing a local exchange telephone carrier to extend to additional customers for an additional period of time a previously authorized promotional and market trial program.

PUBLIC UTILITIES, § 135 — Promotional and market trial programs — Commission authorization — Local exchange telephone carrier.

[N.H.] A local exchange telephone carrier was authorized to extend to additional customers for an additional period of time a previously authorized promotional and market trial program designed to encourage the use of call waiting service; the extension of the program was found to be in the public good in that increased usage of call waiting would increase the efficiency of the network and provide additional revenues to the LEC; moreover, it was found that the program thus far had been cost effective and had not resulted in any customer complaints.

By the COMMISSION:

SUPPLEMENTAL ORDER

WHEREAS, on August 25, 1986 New England Telephone and Telegraph Co., Inc. (hereinafter NET) filed with this commission, pursuant to its Promotional and Market Trial Programs Tariff — NHPUC No. 75, Part A, Section 1.3.5, a two month promotional program of call waiting service in Bedford, Derry, Littleton, Merrimack, and Manchester; and

WHEREAS, by Order No. 18,401 the commission approved the Call Waiting Promotional Program and directed NET to file a tracking report and provide an analysis of the costs and benefits of telemarketing versus the direct mail marketing approach along with a list of any related consumer complaints; and

WHEREAS, on January 25, 1988 NET by letter provided a tracking report that indicates that the promotional program resulted in an increased contribution of $235,000, that the most cost effective marketing approach is a combination of general customer notification by bill inserts and direct mail on a targeted basis to high potential segments of the market and that there were no identifiable customer complaints as a result of the promotional program; and

WHEREAS, NET proposes to extend the Call Waiting two month Promotion to all residence and small business customers located in ESS conversion areas beginning in March 1988 and continuing on an ongoing basis through 1989; and

WHEREAS, the commission finds the encouragement of Call Waiting, which increases the efficiency of the existing network and provides added net revenue to NET, in the public good; it is therefore

ORDERED, that the Call Waiting Promotional Program, pursuant to Part A, Section 1.3.5 of New England Telephone and Telegraph Co., Inc. Tariff No. 75 be, and hereby is, approved; and it is

FURTHER ORDERED, that New England Telephone and Telegraph Co., Inc. provide a semiannual tracking report of the customer development of this offering including the customer response, and the expense, revenue and contribution of the offering.

By order of the Public Utilities

Page 104

Commission of New Hampshire this twenty-second day of March, 1988.

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NH.PUC*03/23/88*[51960]*73 NH PUC 105*American Mobile Communications, Inc.

[Go to End of 51960]

73 NH PUC 105

Re American Mobile Communications, Inc.

DE 87-237
Order No. 19,040

New Hampshire Public Utilities Commission

March 23, 1988

ORDER opening generic docket for the purpose of investigating whether the commission should regulate the resale of cellular telephone communications services.

PUBLIC UTILITIES, § 137 — Resale of service — Cellular telecommunications service — State commission regulation.

[N.H.] In response to a petition for emergency relief alleging that a cellular telecommunication telephone service provider would suffer a competitive disadvantage unless the commission acted to prohibit price competition in the provision of cellular and resale service within the Manchester-Nashua New England County Metropolitan Area, the commission opened a generic docket to consider the regulation of cellular resale services; the docket was divided into three phases: Phase 1 for the consideration of whether the commission should require uniform cellular and resale rates for underlying carriers; Phase II for the consideration of the general resale regulation issue; and Phase III for the consideration of the franchise petition of a cellular service reseller.

APPEARANCES: Dom 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; Rita P. Campanile, Esq. on behalf of NYNEX Mobile Communications Company; and Mary C.M. Hain, Esq. on behalf of the staff of the New Hampshire Public Utilities Commission.

By the COMMISSION:

REPORT ON PREHEARING
CONFERENCE OF
FEBRUARY 24, 1988

This report concerns the prehearing conference on the petition of American Mobile Communications, Inc. for permission to provide service as a public utility. It sets forth an emergency petition filed in the case and the parties preliminary arguments on this petition. It creates a generic docket for the consideration of the petitions and for the consideration of the issue of whether the commission should regulate the resale of cellular telephone communications services.

I. *Procedural History*

On November 20, 1987, American Mobile Communications, Inc. filed a petition requesting a certificate of public convenience and necessity, pursuant to RSA 374:22 and 374:26, to allow it to provide resale cellular telephone communications service in New Hampshire. The petition implicitly requested that the commission regulate resale cellular service.

The commission decided in *Re Motorola Cellular Service, Inc.*, Docket DE 85-395, Order No. 18,216 (April 14, 1986) (71 NH PUC 240), to refrain from the regulation of resale cellular services to the extent that resale would have a competitive effect on the provision of service by the two underlying cellular mobile

radio telecommunications carriers. In that order, we reserved our authority to reinstate traditional regulation should competition for resale service not evolve. The commission specifically decided that it is authorized, and will affirmatively exercise its authority, to regulate the underlying carriers of cellular services in *Re Portsmouth Cellular Limited Partnership,* docket DE 87-126, Phase I, report and order no. 18,848 (September 24, 1987) (72 NH PUC 445).

By an order of notice dated January 14, 1988, we opened docket DE 87-237 for the purpose of reconsidering our decision to refrain from the regulation of resale cellular services and for the investigation of the petition of American Mobile Communications. This order scheduled a prehearing conference on February 24, 1988, and required the petitioner to notify all cellular service resellers and all parties on the service lists of past commission generic cellular dockets.

Starcellular, NYNEX Mobile Communications Company, Manchester NECMA Limited Partnership (Manchester), and JHP Partnership (JHP) filed timely motions to intervene. All of these parties have licenses from the Federal Communications Commission (F.C.C.) as underlying cellular carriers.

On February 22, 1988, Manchester NECMA Limited Partnership filed a petition for emergency relief and other orders. By this petition, Manchester requested that the commission

grant the following relief: either

a) enter an order in this docket prohibiting price competition, and requiring level rates at which cellular service and resale service may be offered to the public by all underlying carriers in the Manchester-Nashua New England County Metropolitan Area (NECMA); or

b) grant Manchester's petition to intervene in *Re JHP Partnership,* DE 87-136, and enter an order therein prohibiting price competition and requiring level rates at which the two underlying cellular carriers in the Manchester-Nashua NECMA can offer cellular and resale service to the public; or

c) enter an order in *Re Manchester NECMA Limited Partnership,* docket DE 87-257, allowing the "meet the competition" provisions of Manchester's proposed tariff to go into effect immediately as an emergency, temporary, or interim permanent tariff provision.

American Mobile Communications did not appear on the date of the prehearing conference. The commission ordered from the bench that the commission would issue an order of notice rescheduling the prehearing conference.

At the prehearing conference, Manchester requested that the commission allow it to make an offer of proof concerning the emergency petition. The commission ruled from the bench that it would not hear Manchester's offer of proof because the emergency petition was not noticed in the order of notice.

The commission heard other arguments concerning the emergency petition, but deferred decision pending consideration. These arguments and the commission's decisions are set forth below.

II. *Positions of the Parties*

The only issues which were argued at the prehearing conference were the issues surrounding the petition for emergency relief. For purposes of clarity the following section will be divided into subsections to address each of the issues advocated in the parties' petitions and oral motions.

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A. Will the Commission Hear the Emergency Relief Petition?

Manchester and the staff argued that the commission should hear the emergency petition. Manchester argued that the commission should immediately grant the petition. JHP objected to the petition.

Manchester argued that the commission should grant it emergency relief from the competitive disadvantage that it is experiencing due to the pricing practices of the other currently unfranchised underlying carrier — JHP Partnership. It averred that, pursuant to F.C.C. regulations, Manchester is required to provide wholesale cellular service to JHP. It alleged that JHP is purchasing service from Manchester and reselling the service at unregulated discounted or promotional rates.

Manchester argues that its current rate structure does not permit it to provide cellular services at rates competitive with those of JHP. Further, it contends that JHP is like no other cellular reseller because, it has the advantage of using its own dedicated subscriber (NXX) numbers.

Thus, when JHP starts to provide service through JHP's own cellular system it will be able, pursuant to F.C.C. regulations, to convert its resale subscribers to JHP cellular subscribers without changing subscriber numbers. Manchester argues that without immediate commission action it will experience immediate irreparable harm and that it, therefore, has a due process right to immediate relief.

JHP objected to the petition. It stated that it does not oppose a level playing field for competition but, it argued that this could be accomplished by a tariff change by Manchester or by deregulation by the commission. JHP declares that Manchester's alleged emergency does not harm the public, it only harms Manchester NECMA Limited Partnership.

B. In What Docket will the Commission Hear the Emergency Relief Petition?

Manchester stated that it would prefer the commission to grant uniform cellular and resale rates for underlying carriers in docket DE 87-237 or in docket DE 87-136. In the alternative, Manchester argued that the commission should approve the so-called “meet the competition” tariff in docket DR 87-257.[1(8)] Manchester also avers that even if DR 87-257 is a closed docket, the commission may consider any rate issue on its own motion pursuant to RSA 378:7.

JHP argued that the commission should not consider the emergency petition in the context of the present docket or in the JHP franchise docket (DE 87-136). It contended that the petition should be heard in the Manchester rate docket because the petition addresses a rate issue. In the alternative, JHP asserts that Manchester should file tariff pages and the commission should open a new docket to consider that form of relief.

The staff took the position that the commission should consider the petition for emergency relief in the present docket. It averred that the relief petition should not be considered in the JHP franchise docket because that docket is not a rate or resale investigation. It argued that consideration of the petition in DR 87-257 (Manchester's rate case) would be inappropriate since, that docket had been closed and the commission specifically decided in that case not to grant the form of relief Manchester has requested in its emergency petition, to wit, permission to lower retail rates without commission authority. Further, it contends that the petition was not filed within the motion for

rehearing period under RSA 541:3.

The staff asserted that, under the *Gas Service* case, and the provisions of RSA 378:7, the commission is not required to reconsider a decision concerning rates that it decided within a two year period unless circumstances have changed since the circumstances surrounding its earlier decision. It stated that the commission knew of the emergency petition circumstances when it made its decision in the Manchester rate case and that those circumstances had not changed. In addition, the staff noted that the commission had not granted the requested relief in the Manchester rate case because, it found that it did not have the authority to do so.

The staff moved that the commission open a generic two phase docket to consider the resale regulation issue, and the emergency petition.

III. *Commission Analysis*

The commission will hear the emergency relief petition. Manchester has alleged facts and circumstances that, if they are proven, may call for some form of relief. In consideration of the alleged emergency we will attempt to expedite our consideration of the petition as much as possible.

The commission will not immediately grant the petition because contesting parties have a right to an opportunity to be heard. We will consider the petition in the present docket.

We do not consider it appropriate to consider the requested relief in dockets DR 87-257 or DE 87-136 because these dockets are not generic dockets and any policy that we set to protect the competitiveness of the cellular telephone market should be considered in the context of a generic docket.

Therefore, we will make the present docket into a generic docket. To allow Manchester to present its emergency case in the most timely manner, we will divide this proceeding into three phases. In Phase I we will consider whether the commission should require uniform cellular and resale rates for underlying carriers. In Phase II we will consider whether the commission should in any other way regulate the resale provision of cellular services. In Phase III we will consider the petition of AMC under RSA 374:22 and 374:26.

Our order will issue accordingly.

ORDER

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

ORDERED, that an order of notice will issue setting a date for a prehearing conference on a generic docket to consider the regulation of cellular resale services; and it is

FURTHER ORDERED, that this generic docket will be divided into three phases: Phase I for the consideration of whether the commission should require uniform cellular and resale rates for underlying carriers, Phase II for the consideration of the general resale regulation issue, and Phase III for the consideration of the AMC franchise petition.

By order of the Public Utilities Commission of New Hampshire this twenty-third day of March, 1988.

FOOTNOTES

[1]The “meet the competition” tariff as originally proposed would allow Manchester to price a service below its minimum commission approved rate,

without prior commission approval, whenever such pricing was necessary to match the minimum rate charged for similar service by any other cellular carrier.

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73 NH PUC 109

Re Public Service Company of New Hampshire

DR 87-151
13th Supplemental Order No. 19,042
New Hampshire Public Utilities Commission
March 24, 1988

ORDER denying a request by an electric utility for emergency rate relief.

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1. VALUATION, § 224 — Construction work in progress — Rate base treatment — Financial considerations — Electric utility.

[N.H.] Pursuant to *Re Public Service Co. of New Hampshire,* 130 N.H. 265, 92 PUR4th 546, 539 A.2d 263 (1988), the commission may not include construction work in progress (CWIP) in the rate base of an electric utility regardless of whether the failure to include CWIP in rate base would result in the utility being unable to meet its financial obligations. p. 109.

2. RATES, § 630 — Authority to grant emergency rate relief — Effect of anti-CWIP statute — Financially troubled electric utility.

[N.H.] In denying a petition by a financially troubled electric utility for emergency rate relief, the commission found that it lacked authority to permit the utility to include construction work in progress in rate base regardless of the existence of a financial emergency; the commission's finding was compelled by a decision of the New Hampshire Supreme Court, *Re Public Service Co. of New Hampshire,* 130 N.H. 265, 92 PUR4th 546, 539 A.2d 263 (1988), which held that state statute RSA 378:30-a prohibited the inclusion of CWIP in rate base regardless of whether the failure to include CWIP in rate base would result in the utility being unable to meet its financial obligations. p. 109.

APPEARANCES: Martin L. Gross, Esq. of Sulloway, Hollis & Soden, Thomas R. Jones, Esq. of Cahill, Gordon & Reindel and D. Pierre G. Cameron, Jr. Esq. 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 G. Wilson for the Business and Industry Association; Mark J. 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, Esq. for the commission staff and the commission.

By the COMMISSION:

REPORT

[1,2] On August 5, 1987 Public Service Company of New Hampshire (PSNH) filed a petition to alter existing rates on account of emergency circumstances to 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 contended that absent the requested relief it would have no choice but to seek protection from creditors under federal bankruptcy laws. It, therefore, requested the commission to transfer to the New Hampshire Supreme Court a question

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regarding the rights of a public utility in such circumstances, notwithstanding the restrictions of RSA 378:30-a:

> 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 granted the PSNH request[1(9)] and in addition, transferred the following two questions:[2(10)]

> Does the U.S. Constitution or the N.H. 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?
>
> 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?

The court deferred accepting the transferred questions until the commission made findings of basic facts addressing the following issues:

> 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 § [378:] 30-a, and thereafter.

The commission developed findings of fact related to the transferred questions for the court,[3](11) held numerous hearings, and heard oral argument on December 31, 1987. At the oral argument, PSNH supported granting the requested increase. The consumer advocate and CRR opposed the increase. The other parties in the case[4](12) did not

appear at the argument. The commission also notes that it issued orders dealing with numerous other motions and procedural concerns during the case.[5](13)

Evidence heard after said findings of fact were forwarded to the supreme court showed that PSNH did not meet and was not meeting its cash obligations. Based on these findings the commission concludes that a financial emergency did and does exist.

On January 26, 1988, the supreme court[6](14) issued an opinion addressing the three questions transferred to the court. All were answered in the negative. Under that supreme court opinion and the findings of fact made in this case, the commission lacks authority to grant PSNH a rate increase. Thus, pursuant to state law, the commission finds that it must deny PSNH's request for a rate increase.

All other motions and requests before the commission that have not been previously ruled on are hereby denied.

Our Order will issue accordingly.

SUPPLEMENTAL ORDER

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

ORDERED, that this petition is dismissed and the requested rate relief is denied as is detailed in the foregoing Report.

By order of the Public Utilities Commission of New Hampshire this twenty-fourth day of March, 1988.

FOOTNOTES

[1]Report Regarding Request for Transfer, Order No. 18,788 (72 NH PUC 349) and Interlocutory Transfer Without Ruling (August 11, 1987).

[2]*Id.;* and Tenth Supplemental Order No. 18,901 (November 5, 1987) (72 NH PUC 524).

[3]Report Regarding Findings Pursuant to September 2, 1987 Supreme Court Order and Sixth Supplemental Order No. 18,873 (October 14, 1987) (72 NH PUC 485); and Supplemental Report Regarding Findings Pursuant to September 2, 1987 Supreme Court Order and Ninth Supplemental Order No. 18,890 (November 2, 1987) (72 NH PUC 520).

[4]The other parties are: The Business and Industry Association of New Hampshire, the

Department of Defense, the New Hampshire Electric Cooperative, the City of Nashua, the Town of Rye, and the City of Manchester.

[5]Order No. 18,801 (August 25, 1987); Report on Prehearing Conference of August 25, 1987 and Supplemental Order No. 18,805 (August 31, 1987) (72 NH PUC 373); Supplemental Order No. 18,815 (September 4, 1987); Second Supplemental Order No. 18,812 (September 3, 1987); Report Regarding Consumer Advocate's Motion For Rehearing and Third Supplemental Order No. 18,827 (September 14, 1987) (72 NH PUC 390); Report Regarding Consumer Advocate's Motion to Transfer and Fourth Supplemental Order No. 18,828 (September 14, 1987) (72 NH PUC 393); Report Regarding CRR Request for Findings and Fifth Supplemental Order No. 18,832 (September 15, 1987) (72 NH PUC 426); Report Regarding Consumer Advocate Motion for Clarification and Sixth Supplemental Order No. 18,865 (October 2, 1987) (72 NH PUC 483); Sixth Supplemental Order No. 18,873 (October 14, 1987) (72 NH PUC 485); Report Regarding Consumer Advocate's Motion to Compel and Seventh Supplemental Order No. 18,880 (October 21, 1987) (72 NH PUC 502); Report Regarding CRR Motion to Compel and Eighth Supplemental Order No. 18,881 (October 21, 1987) (72 NH PUC 509); Report Regarding Motion to Rehear Order No. 18,881 and Motion for Enlargement of Time and Eleventh Supplemental Order No. 18,911 (November 18, 1987) (72 NH PUC 534); and Report Regarding Motions, Closing of Record and Post Hearing Argument and Twelfth Supplemental Order No. 18,935 (December 21, 1987) (72 NH PUC 569).

[6]*Re Public Service Co. of New Hampshire*, 130 N.H. 265, 92 PUR4th 546, 539 A.2d 263 (1988).

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NH.PUC*03/24/88*[51962]*73 NH PUC 112*Small Power Producers and Cogenerators

[Go to End of 51962]

73 NH PUC 112

Re Small Power Producers and Cogenerators

DE 78-232, DE 78-233, DE 79-208
Order No. 19,043

New Hampshire Public Utilities Commission

March 24, 1988

ORDER amending capacity audit procedures for the various types of small power production and cogeneration facilities.

COGENERATION, § 1 — Generally — Capacity audit procedures.

[N.H.] In response to the increasing number of qualifying cogeneration and small power

production facilities in operation, the commission amended its capacity audit procedures to eliminate the November to February auditing period restrictions, thereby allowing capacity audits to be conducted on a year-wide basis; it was found that the amended procedures would allow for a more levelized auditing schedule for the commission staff and would be responsive to providing capacity ratings for producers.

By the COMMISSION:

ORDER

WHEREAS, in Commission Dockets DE 78-232, DE 78-233 and DE 79-208, standards were set forth which established Commission capacity audit procedures for the various types of small power producers and cogenerator facilities; and

WHEREAS, the Commission adopted the standard that these small energy producers will undergo annual audits during the time period of November 1 through February 28; and

WHEREAS, due to the increasing number of qualifying facilities now in operation, and the Commission's desire to (1) maintain a more levelized auditing schedule for staff and (2) be responsive to providing capacity ratings for the producer; it is

ORDERED, that the November to February auditing period restriction be eliminated, thereby allowing capacity audits to be conducted on a year-wide basis.

By order of the Public Utilities Commission of New Hampshire this twenty-fourth day of March, 1988.

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NH.PUC*04/04/88*[51963]*73 NH PUC 112*Pennichuck Water Works, Inc.

[Go to End of 51963]

73 NH PUC 112

Re Pennichuck Water Works, Inc.

DR 87-224
Supplemental Order No. 19,047

New Hampshire Public Utilities Commission

April 4, 1988

ORDER authorizing a water utility to implement temporary rates and establishing procedural schedule for its permanent rate case.

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1. RATES, § 85 — Temporary rates — Powers of state commission.

[N.H.] The power of the commission to set temporary rates is discretionary and shall be exercised only when such rates are in the public interest. p. 113.

2. RATES, § 85 — Temporary rates — Duties of state commission — Scope of investigation.

[N.H.] The commission's duty to investigate temporary rate requests is less than that required in setting permanent rates. p. 113.

3. RATES, § 630 — Temporary rates —

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Over- and underrecoveries — Recoupment.

[N.H.] Any overrecovery or underrecovery resulting from temporary rates will be addressed by allowing ratepayers to recoup any overrecovery and allowing the company to recoup any underrecovery. p. 113.

4. RATES, § 630 — Temporary rates — Water utility.

[N.H.] A water utility was authorized to implement temporary rates at current rate levels where (1) the parties agreed to the implementation of temporary rates, (2) the utility was prepared to present evidence in support of its request for temporary rates, (3) the utility had not received a rate increase since 1985, and (4) ratepayers would be protected against overcollection by recoupment procedures available under the temporary rate process. p. 113.

APPEARANCES: Mary Ellen Kiley, Esquire and John B. Pendleton, Esquire of Gallagher, Callahan and Gartrell on behalf of Pennichuck Water Works, Inc.; Dom S. D'Ambruoso, Esquire of Ransmeier and Spellman for Anheuser-Busch Inc.; Larry S. Eckhaus, Esquire for the Consumer Advocate and Martin C. Rothfelder, Esquire for the commission and the commission staff.

By the COMMISSION:

REPORT REGARDING TEMPORARY RATES AND PREHEARING CONFERENCE

This report and order authorizes temporary rates, and adopts a procedural schedule to govern this proceeding in accordance with an unanimous March 24, 1988 agreement of the parties to this case.

On January 15, 1988, Pennichuck Water Works, Inc. (Pennichuck or the Company) filed revised tariffs designed to increase its revenues by $705,096 on an annual basis. On January 15, 1988, Pennichuck filed a petition for temporary rates. On February 9, 1988, the commission suspended the proposed tariffs, and set a prehearing conference for March 29, 1988. On March 29, 1988, the parties came before the commission and indicated they had reached a settlement regarding the issue of temporary rates and the procedural schedule under which the permanent rate case should proceed.

[1-3] Turning first to temporary rates, the commission's power to set temporary rates is explicitly authorized by statute. N.H. Rev. Stat. Ann. § 328:27. The commission's power to set such rates is discretionary and shall be exercised only when such rates are in the public interest. *Id.* The commission's duty to investigate temporary rate requests are less than is required in setting permanent rates. *Public Service Co. 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).

[4] In the instant case not only the commission staff, but the consumer advocate and Anheuser-Busch Busch agreed to temporary rates at current levels effective the date of issuance of this order. The company indicated in a comment that it was particularly interested in receiving rates effective for service rendered on and after April 1, 1988. It appears that Pennichuck Water Works was prepared to present

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testimony of Charles J. Staab in support of its petition. In addition, it appears that this company has not received an increase since October, 1985. *Re Pennichuck Water Works, Inc.*, 70 NH PUC 850 (1985). In light of these circumstances, and considering the above discussed protections for both the consumer and the public under the temporary rates process in New Hampshire, the commission finds it reasonable to provide for temporary rates at current rate levels effective the date of this order. As additional support for this action, the commission shall take notice of the testimony of Charles J. Staab on temporary rates filed in this proceeding solely for the purposes of supporting the settlement, with the understanding that parties have not had the opportunity to cross-examine Mr. Staab. That testimony shall not be considered in setting permanent rates unless Mr. Staab is made available for cross-examination.

During the prehearing conference, the parties stipulated to the following procedural schedule:

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

```
April 5, 1988      — Company Letter on Whether They
                     Will Update Test Year, and if so,
                     To What Year, Due
May 2, 1988        — Testimony and Exhibits Related To
                     Company Updated Test Year Due
July 19, 1988      — Intervenor Data Requests on Company
                     Due
July 26, 1988      — Staff's Data Requests on Company Due
August 2, 1988     — Company Responses to Intervenor
                     Data Requests Due
August 9, 1988     — Company Responses to Staff Data
                     Requests Due
August 26, 1988    — Intervenor Rate Design Testimony
                     Due
September 2, 1988  — Non-Rate Design Intervenor Testimony
                     Due; Staff Rate Design Testimony Due
September 9, 1988  — Staff Non-Rate Design Testimony Due
September 12, 1988 — Data Requests Upon Staff and
                     Intervenors Due
September 16, 1988 — Pre-Hearing Conference
                     10:00 a.m. (off the record)
September 26, 1988 — Responses to Data Request by Staff
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                      and Intervenors Due
September 30, 1988 — Rebuttal Testimony, if Appropriate,
                      Due
October 4-6, 1988  — Hearings (10:00 a.m. each day)
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The commission finds this procedural schedule reasonable and shall order it to govern these proceedings.

Our order will issue accordingly.

SUPPLEMENTAL ORDER

Based upon the foregoing REPORT REGARDING TEMPORARY RATES AND PREHEARING CONFERENCE, which is incorporated herein by reference, the commission

ORDERS, that the company shall be authorized to implement temporary rates at current rate levels effective for service rendered on and after April 1, 1988; and it is

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FURTHER ORDERED, that the procedural schedule discussed in the foregoing report shall govern this proceeding, unless otherwise ordered by the commission.

By order of the Public Utilities Commission of New Hampshire this fourth day of April, 1988.

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NH.PUC*04/06/88*[51964]*73 NH PUC 115*New England Telephone and Telegraph Company

[Go to End of 51964]

73 NH PUC 115

Re New England Telephone and Telegraph Company

DE 88-034
Order No. 19,051

New Hampshire Public Utilities Commission

April 6, 1988

ORDER nisi authorizing a local exchange telephone carrier to install, maintain and operate aerial telephone plant over and across public waters.

CERTIFICATES, § 123 — Telephone — Placement of plant over public waters — Conditions on approval.

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[N.H.] A local exchange telephone carrier was conditionally authorized to install, maintain and operate aerial telephone plant over and across public waters where (1) the plant was necessary to ensure the continuity of telephone service during the demolition and reconstruction of a bridge, (2) the carrier had assured the commission that it had coordinated the construction of the plant with the New Hampshire Department of Transportation and had obtained all necessary easements, and (3) the carrier had indicated that the plant would be removed and relocated within the structure of the bridge upon completion of the reconstruction; authorization was conditioned upon the public having an opportunity to respond and upon all construction meeting the requirements of the National Electric Safety Code.

By the COMMISSION:

ORDER

WHEREAS, on March 16, 1988, the New England Telephone & Telegraph Company, Inc. (NET) filed with this Commission its petition seeking license under RSA 371:17 to install, maintain and operate aerial telephone plant over and across the public waters of the Connecticut River between Walpole, New Hampshire, and Westminster, Vermont; and

WHEREAS, such plant comprises temporary facilities to serve the public's needs during demolition and reconstruction of a bridge along Route 123; and

WHEREAS, said temporary facility is necessary to ensure the continuity of telephone service of subscribers in the Walpole/Westminster area during that construction; and

WHEREAS, NET has assured the Commission that its construction has been coordinated with the New Hampshire Department of Transportation; and has further assured the Commission that it possesses necessary easements for pole location on properties owned by the State of New Hampshire (Pole No. 1/13) and the State of Vermont (Pole No. 1/11); and

WHEREAS, NET indicates said pole line is temporary with all plant to be removed upon completion of bridge construction and relocation of the telephone plant to conduit within the bridge structure; and

WHEREAS, the Commission finds such construction of telephone plant in the public good; however, feels affected parties should be given an opportunity to respond in support of, or in opposition thereto; it is

ORDERED, that all persons desiring to respond to this NET petition be notified that they may file written comments or a written request for public hearing before this Commission no later than April 18, 1988; and it is

FURTHER ORDERED, that such notice be given by one-time publication of a summary of the petition in a newspaper having broad readership in the Walpole/Westminster area no later than April 11, 1988, and documented in an affidavit to be filed with this Commission; and it is

FURTHER ORDERED, *NISI,* that NET be, and hereby is, granted license under RSA 371:17 et seq to install, maintain and operate a 600-pair cable originating at Pole Number 1/13 in Walpole, New Hampshire, extending over and across the Connecticut River and terminated at

Pole Number 1/11 in Westminster, Vermont; and it is

FURTHER ORDERED, that all construction meet the requirements of the National Electrical Safety Code; and it is

FURTHER ORDERED, that said pole line shall be removed upon completion of required bridge construction and

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appropriate replacement plant installed within the bridge; and it is

FURTHER ORDERED, that said authority shall become effective 15 days from the date of this order unless a hearing is requested as provided herein or the Commission otherwise directs.

By order of the Public Utilities Commission of New Hampshire this sixth day of April, 1988.

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NH.PUC*04/06/88*[52118]*73 NH PUC 115*New Hampshire Electric Cooperative, Inc.

[Go to End of 52118]

73 NH PUC 115

Re New Hampshire Electric Cooperative, Inc.

Additional parties: Harry Pine; G. Ruth Pine; Gilda H. Quinzani

DR 88-43
Order No. 19,050

New Hampshire Public Utilities Commission

April 6, 1988

ORDER allowing a special contract for electric service to become effective.

RATES, § 321 — Electric — Special contract.

[N.H.] A special contract for electric service was allowed to become effective where the terms and conditions of the contract were found to be just and in the public interest.

By the COMMISSION:

ORDER

WHEREAS, New Hampshire Electric Cooperative, Inc., a utility selling electricity under the jurisdiction of this commission, has filed with this commission a copy of its Special Contract No.

76 with Harry and G. Ruth Pine and Gilda H. Quinzani, effective March 17, 1988, for electric service at property in the Town of Orange, New Hampshire at the applicable rates as authorized; and

WHEREAS, this electric service is being rendered under the provisions of a "Special Contract" agreement originally negotiated with the original applicant, Mr. George D. Kopperal, for electric service at this property under the terms of Special Contract 19 in Docket I-R 14,255, Order No. 11,480, issued June 27, 1974 (59 NH PUC 233); 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 become effective as of March 17, 1988.

By order of the Public Utilities Commission of New Hampshire this sixth day of April, 1988.

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NH.PUC*04/07/88*[51965]*73 NH PUC 117*Public Service Company of New Hampshire

[Go to End of 51965]

73 NH PUC 117

Re Public Service Company of New Hampshire

DR 86-41
Order No. 19,052

Re UNITIL Service Company

DR 86-69
Order No. 19,052

Re New Hampshire Electric Cooperative, Inc.

DR 86-70
Order No. 19,052

Re Granite State Electric Company, Inc.

DR 86-71
Order No. 19,052

Re Connecticut Valley Electric Company

DR 86-72
Order No. 19,052

New Hampshire Public Utilities Commission

April 7, 1988

ORDER resolving policy issues surrounding the translation of previously adopted avoided cost

methodologies into purchased power relationships between electric utilities and qualifying cogeneration and small power production facilities.

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1. COGENERATION, § 25 — Rates — Avoided costs — Legal standards — LEEPA — PURPA.

[N.H.] The New Hampshire Limited Electric Energy Producers Act, RSA 362-A (LEEPA) and the Public Utility Regulatory Policies Act, 16 U.S.C. § 824a-3 *et. seq.* (PURPA) require the commission to establish rates for the sale of electric power to utilities that are (1) based on the utility's incremental cost of alternative electric energy and capacity, (2) nondiscriminatory, (3) just and reasonable to the consumers of the electric utility, and (4) in the public interest; both LEEPA and PURPA allow, but do not require, the commission to establish long term rates. p. 122.

2. COGENERATION, § 25 — Rates — Avoided costs — Methodology for establishing rates.

[N.H.] In a proceeding to resolve policy issues surrounding the translation of previously adopted avoided cost methodologies into purchased power relationships between electric utilities and qualifying cogeneration and small power production facilities, the commission accepted the recommendation that it should establish a more flexible (negotiation based) system for establishing rates paid to QFs than that represented by standard utility-specific long term rate offers; however, the commission concluded that a flexible, negotiation-based system could not be effectively implemented absent the development of a process whereby the commission could evaluate utility long term resource needs. p. 123.

3. COGENERATION, § 25 — Rates — Avoided costs — Methodology for establishing rates.

[N.H.] In a proceeding to resolve policy issues surrounding the translation of previously adopted avoided cost methodologies into purchased power relationships between electric utilities and qualifying cogeneration and small power production facilities (QFs), the commission concluded that the QF industry in New Hampshire over the last ten years had developed to the extent that the commission no longer needs to offer standard long term levelized rates in order to secure needed QF

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capacity. p. 125.

4. COGENERATION, § 25 — Rates — Avoided costs — Eligibility for rates — Project maturity.

[N.H.] In a proceeding to resolve policy issues surrounding the translation of previously adopted avoided cost methodologies into purchased power relationships between electric utilities and qualifying cogeneration and small power production facilities (QFs), the commission concluded that the high degree of speculation in the QF industry requires that criteria of project maturity be established to assure that projects obtaining rates and contracts will be able to provide capacity when it is needed. p. 125.

5. COGENERATION, § 25 — Rates — Avoided costs — Eligibility for rates — Capacity limits.

[N.H.] In a proceeding to resolve policy issues surrounding the translation of previously adopted avoided cost methodologies into purchased power relationships between electric utilities and qualifying cogeneration and small power production facilities (QFs), the commission concluded that inasmuch as the supply of QFs is highly elastic at certain price levels there is a need to limit the amount of capacity eligible for any particular energy or capacity rate. p. 125.

6. COGENERATION, § 25 — Rates — Avoided costs — Eligibility for rates — Diversity of resources.

[N.H.] In a proceeding to resolve policy issues surrounding the translation of previously adopted avoided cost methodologies into purchased power relationships between electric utilities and qualifying cogeneration and small power production facilities (QFs), the commission concluded that it must establish guidelines to ensure that the diversity of resource goals of the New Hampshire Limited Electrical Energy Producers Act are met. p. 125.

7. COGENERATION, § 11 — Interconnection — Coordination of location decisions with system needs.

[N.H.] In a proceeding to resolve policy issues surrounding the translation of previously adopted avoided cost methodologies into purchased power relationships between electric utilities and qualifying cogeneration and small power production facilities (QFs), the commission concluded that it must assure that utilities provide sufficient information regarding load centers and transmission lines to make it possible for QFs to better coordinate their location decisions with the needs of the utility system. p. 126.

8. COGENERATION, § 25 — Rates — Avoided costs — Eligibility for rates — Compatibility with integrated least cost resource plans.

[N.H.] Consistent with its determination that the development of the qualifying cogeneration and small power production facility (QF) industry should be encouraged within the context of overall utility long term resource planning, the commission directed that each utility file an integrated least cost resource plan in conjunction with an updated forecast of avoided costs; the plans, which must be updated on a biennial basis, must provide a comprehensive and detailed assessment of all reasonably available demand-side and supply-side utility investment options to satisfy ratepayers' energy resource needs at the lowest overall cost consistent with the reliable supply of electricity; the information developed through biennial updates to the plans will serve as a framework for QF long term rates and private negotiations. p. 126.

9. COGENERATION, § 25 — Rates — Avoided costs — Establishment of rates — Resource planning — Forecasts.

[N.H.] As a means of assuring that the criteria and assumptions applied by electric utilities in their negotiations with qualifying cogeneration and small power production facilities (QFs) are the same as those used in judging their own resource options, and to ensure that

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QFs have access to the information they need to compete effectively with other resource

options, the commission directed each utility to update its long term least cost resource plan with biennial filings containing reports and analyses concerning (1) forecast of future demands, (2) assessment of demand-side resource options, (3) assessment of supply-side resource options, (4) assessment of transmission constraints and requirements, (5) integration of demand-side and supply-side options, (6) two-year implementation plan and forecast designed to detail how its long term integrated least cost resource plan will develop, and (7) an updated forecast of avoided costs developed in a manner consistent with the above reports and analyses, which will provide the maximum price for all QF power purchase arrangements. p. 126.

10. COGENERATION, § 25 — Rates — Avoided costs — Establishment of rates — Resource planning — Forecasts.

[N.H.] In determining the appropriate utility resource additions that can be potentially avoided by cogeneration and small power production facilities (QFs) and the megawatt amount of QF purchase power arrangements each utility should be seeking, the commission will review the adequacy and reasonableness of each utility's integrated least cost plan reports, as well its calculation of avoided costs. p. 126.

11. COGENERATION, § 25 — Rates — Avoided costs — Establishment of rates — Resource planning.

[N.H.] If the commission determines that qualifying cogeneration and small power production facilities (QFs) cannot allow a generating utility to avoid any resources during the first eight years of its long term least cost integrated resource planning period, then that utility will be required to offer the QFs an as-available short-term energy and capacity rate. p. 130.

12. COGENERATION, § 14 — Wheeling — Non-generating utilities.

[N.H.] In a proceeding to resolve policy issues surrounding the translation of previously adopted avoided cost methodologies into purchased power relationships between electric utilities and qualifying cogeneration and small power production facilities, the commission decided to continue the existing arrangement whereby non-generating utilities have the option of either purchasing power from QFs or wheeling it at no charge to their requirements supplier. p. 131.

13. COGENERATION, § 25 — Rates — Avoided costs — Methodology for establishing rates.

[N.H.] If the commission determines that qualifying cogeneration and small power production facilities (QFs) have the potential to allow a generating utility to avoid investment in additional resources during the first eight years of the utility's long term least cost integrated resource planning period, then the commission will require long term commitments between the utility and QFs; specifically, the utility would be required to make a standard offer to smaller renewable resource QFs and to individually negotiate with large and/or non-renewable resource based projects. p. 131.

14. COGENERATION, § 24 — Rates — Eligibility for long term standard offer.

[N.H.] If the commission determines that purchases from qualifying cogeneration and small power production facilities (QFs) can displace a utility resource option, then the utility must make available long term standard offers for those QFs that have an installed capacity of 100 to 1000 kilowatts *and* are based on renewable resources; in order to be eligible to apply for the standard offer, the QF must demonstrate the following indications of project maturity: site

control, Federal Energy Regulatory Commission license or exemption, approved necessary state environmental and local permits, a detailed plan of the proposed financing for the project, a plan of construction including a timetable, and plans or agreements for the reliable

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operation of the project during the term of the standard offer. p. 131.

15. COGENERATION, § 25 — Rates — Avoided costs — Methodology for establishing rates — Standard offers.

[N.H.] Long term standard offers made available to qualifying cogeneration and small power production facilities by utilities must incorporate the following characteristics: (1) the rate must be equal to the projected cost of the avoidable resource identified in the generating utility's long run integrated resource plan; (2) the term of the rate should be the lesser of 15 years or 3 years beyond the term of the QF's financing; and (3) the offer must permit QFs to apply for rates whose initial years are the first three years of the stream of the adopted avoided costs. p. 131.

16. COGENERATION, § 25 — Rates — Avoided costs — Methodology for establishing rates — Negotiations.

[N.H.] Electric utilities were directed to establish a private contracting and negotiation procedure for all qualifying cogeneration and small power production facilities (QFs) that are larger than 1000 kilowatts and/or based on fossil fuel: specifically, utilities must (1) identify the megawatt amount of utility resources in its integrated resource plan than can be displaced or delayed following a projection of QF capacity available under the as-available short term rates and its long term standard offer, and (2) develop and implement a procedure for negotiating with QFs offering to provide energy and capacity. p. 132.

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i. COGENERATION, § 25 — Rates — Avoided costs — Methodology for establishing rates.

[N.H.] Discussion, by the commission, of how the evolution of the commission's rate-setting policy concerning utility purchases from qualifying cogeneration and small power production facilities (QFs) and the development of the QF industry have led to the need to translate previously adopted avoided cost methodologies for setting rates into purchased power relationships between electric utilities and QFs. p. 123.

APPEARANCES: As previously noted.

By the COMMISSION:

I. PROCEDURAL HISTORY

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)(DE 83-62); 2) establish consistent terms, conditions and avoided cost methodologies

for sales by qualifying small power producers and qualifying cogenerators (qualified facilities or 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)(DR 85-215); and 4) decline to accept long term rate filings submitted after February 7, 1986 until the issues raised in the petition were adjudicated.

By Order of Notice dated February 26, 1986, the commission opened Docket No. DR 86-41, Re *Public Service Co. of New Hampshire Avoided Costs* for the purpose of investigating the terms, conditions and denied the following PSNH requests:

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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 DR 85-215, be updated in the context of this docket rather than following the previously determined annual update time frame; and

3) that the commission decline to accept long term rate filings submitted after February 7, 1986 pending resolution of the matters to be adjudicated in this proceeding.

Rather, also on February 26, 1986, the commission opened a series of separate dockets to examine the terms conditions and avoided cost methodology for the remaining electric utilities: Docket Nos. DR 86-69, the UNITIL Companies (UNITIL); DR 86-70, the New Hampshire Electric Cooperative (NHEC); DR 86-71, Granite State Electric Company (GSE); and DR 86-72, Connecticut Valley Electric Company (CVEC). On September 23, 1986, by report and order no. l8,407 (71 NH PUC 547), the commission consolidated the cases for purposes of hearing and subsequently adopted the proposal by the parties presented at the January 19, 1987 procedural hearing for a three phase hearing schedule. In Phase I, the parties to the settlement agreement concerning the technical development of avoided cost presented and defended their stipulated methodology while PSNH presented contrary evidence and argument. Phase II would have occurred only if the commission rejected the settlement agreement. Phase III of the proceeding dealt with the policy issues surrounding the translation of the avoided cost methodology adopted in Phase I into a commission rate and/or alternative policies for establishing the purchased power relationships between the utility companies and the QFs.

On September 14, 1987 the commission issued report and order no. 18,829 (72 NH PUC 396), which set out the detailed procedural history of the dockets, adopted the stipulated avoided cost methodology both for the utilities that had signed the settlement agreement and for PSNH, ordered PSNH to file avoided costs consistent with the findings in the commission report, and deferred consideration of specific aspects of NHEC's avoided costs to Phase III.

The commission held hearings on Phase III of this proceeding on August 3-6, 17, 19 and 21, 1987. The parties filed initial briefs on October 14, 15 and 16, 1987, and GSEC filed a reply brief on October 30, 1987.

II. POSITIONS OF THE PARTIES

The utility companies generally emphasized the need to create a system that encourages

direct negotiations between utilities and QFs, private contracting, flexibility and the use of avoided cost as a reference for negotiated contracts rather than the formula for a commission-set standard rate offer. While CVEC gave moderate support to the establishment of a formal bidding system, most companies argue that such a system lacks the flexibility of private negotiation, particularly once the bids have been formally accepted, and is cumbersome, especially in light of the small amount of additional capacity needed by each individual company. UNITIL, although not supporting a formal bidding system, did recommend that the commission adopt a specific framework for

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negotiations, observing that "QFs require a well defined process so that they can efficiently structure their own planning and proposals on a competitive basis" and that "QFs may be concerned that an unstructured private negotiation system also provides insufficient mechanisms and safeguards to discourage unfair dealing." UNITIL Brief at 12.

The utilities recommended annual updates of avoided cost and reports to, and review by, the commission on each utility's progress in contracting with QFs. The companies recommend that only if the commission finds that the progress of negotiations by individual utilities is unsatisfactory should it establish long term purchase power rates or "employ its powers under RSA 362-A to persuade, even compel them to join the parade." GSE Brief at 14.

If the commission establishes rates, the utilities advocate limitations on the size of each QF and the aggregate capacity to be added in each year, restrictions on the amount of front-end loading related to each project's capital costs or equity investment, and the adoption of specific provisions for security. Additionally, NHEC recommends that the length of the rate term be limited to ten years, that the commission specify the minimum terms and conditions that should be contained in most negotiated agreements and that the commission retain the option that distribution companies may wheel QF power to their wholesale supplier at no charge.

Pinetree argues that the methodology of DE 83-62 should not be completely disregarded but should be modified. It recommends a methodology that combines the calculation of avoided costs at various increments and the queuing of applicants. It also suggests that the commission retain and expand its requirements for QF eligibility for long term rates and adopt a system of milestones with respect to project development.

Pinetree agrees, however, that "private contracting is a viable alternative provided appropriate guidelines and safeguards are developed and made applicable for the process." Brief at 10. Pinetree requests that the commission establish "a schedule of avoided costs, encourage the implementation of private negotiated contracts between SPP and utilities, and hold that the terms and conditions established in DE 83-62, with certain modifications ... are presumptively reasonable." Brief at 17. Its suggested modifications relate to the adoption of milestones with respect to project development.

The Consumer Advocate did not submit a Brief, but endorsed a bidding system in the proceedings through a witness who presented the frameworks for bidding as adopted by other New England commissions and particularly commended the Massachusetts system.

III. COMMISSION ANALYSIS

[1] The purpose of Phase III of the instant proceeding is to resolve the policy issues surrounding the translation of the avoided cost methodology adopted in Phase I into purchased power relationships between utility companies and QFs. Such policy will continue to fulfill the commission's responsibilities under the New Hampshire Limited Electrical Energy Producers Act, RSA Chapter 362-A as amended (LEEPA), and the Federal Public Utility Regulatory Policies Act, 16 U.S.C. §824a-3 *et. seq.* (PURPA). These acts require the commission to establish rates for the sales of electric power to public utilities that are (2) based on the utility's incremental cost of alternative electric

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energy and capacity, (2) non-discriminatory, (3) just and reasonable to the consumers of the electric utility, and (4) in the public interest. Both allow, but do not require, the commission to establish long term rates.

[2] In reviewing the record before us, we note that there is broad consensus among the parties that the policy established by the commission emphasize flexibility and encourage direct negotiation between the utilities and the QFs. The utilities suggest that the commission review the progress of negotiations and impose long term purchase power rates only if it finds that progress unsatisfactory. The commission accepts the recommendations of the parties that, at least initially, it institute a more flexible system than that represented by standard utility-specific long term rates offers.

However, we do not believe that such a system can be effectively implemented absent a commission approved framework for those flexible negotiations. We find that the proper goal for the commission policy regarding short term and long term utility purchases of energy and capacity from QFs is the integration of QFs into the utility's own long term resource planning in an efficient and equitable manner. Therefore, the necessary framework for utility negotiations with QFs must be that utility long term resource planning. One necessary outcome of these proceedings is the need to develop and implement a process in which the commission can evaluate all demand-side and supply-side resource additions, including QFs, to the utilities, systems.

The following analysis will first briefly review the evolution of commission policy and the QF industry in New Hampshire that resulted in the contextual setting for the instant order. Next we will specify the reports and analysis of the resource plan that the commission will require each utility to file and support in order that a utility-specific, commission approved framework for utility-QF negotiations can be formulated. Last, we will delineate the process and rates, terms and conditions of purchase power arrangements available within that framework.

A. *Evolution of commission policy and the QF industry*

[i] Following the passage of the LEEPA and PURPA legislation in 1978, the commission set rates and established interconnection standards, first for PSNH as the state's only generating utility and subsequently for the state's non-generating utilities. These early orders determined short term buy back rates for energy and capacity for all utilities, and offered non-generating utilities the option of either paying their generating suppliers' avoided cost or wheeling to their

suppliers at no charge. Although the commission also encouraged utilities to negotiate long term purchase power agreements with developers, only PSNH responded, signing long term contracts primarily with small hydro-electric facilities. Between 1978 and 1983, 57 facilities achieved commercial operation; they were predominantly run of the river hydro-electric (41), but also residential wind (1), wood/cogeneration (4) and photovoltaic (1).

In the spring of 1983, the New Hampshire Legislature amended LEEPA to redefine qualifying facilities to cover all technologies that qualify under PURPA (including fossil fuel based cogeneration, which had not previously qualified under LEEPA) and specifically grant the commission the authority to establish a long term purchase power rate. Pursuant to the

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amended statute, the commission opened DE 83-62 to reconsider the methodology for setting PSNH's short term rates and formulate its long term rates for the first time. Following extensive settlement discussions among staff, PSNH and QF developers, in June 1984 the commission adopted the new methodology and procedures for both the short term and permanent long term rates. Under the DE 83-62 rates, the commission approved 105.786 MWs of capacity, some of which reflects the shift by a few facilities previously receiving short term rates to a long term commitment for sale of energy and capacity to PSNH.

In September 1985, in DR 85-215 the commission revised the long term rates and the short term capacity rate by inserting updated data into the methodology established in DE 83-62. However, the growing disparity between the DR 85-215 rates and the cost of developing projects based on lower interest rates and, for cogenerators, declining fossil fuel rates of late 1985 and early 1986, enhanced the economic feasibility of projects that could develop on DR 85-215 rates. In the first four months of 1986, facilities representing the following amounts of capacity petitioned the commission for a long term rate pursuant to DR 85-215:

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

January	41.60 MW	
February	124.96 MW	(plus a 49.5 MW rejected filing)
March	166.50 MW	(plus a 55 MW rejected filing and 20 MW filing that was subsequently withdrawn)
April	204.98 MW	
May	45.82 MW	
Total	583.86 MW	

Partially as a result of the magnitude of the capacity offered by QFs, PSNH petitioned in February 1986 that the commission open the instant dockets. In addition to these generic dockets regarding rates, terms and conditions of the utility/QF power purchase arrangements, throughout 1986 the commission held hearings on the petitions by individual QF developers. Issues addressed in these hearings included project maturity required at the time of filing for a long term rate, the eligibility of third party fossil fuel cogenerators for long term rates especially if levelized, the extent of New Hampshire's wood resource and the financial and managerial ability of the sponsors of wood-electric projects to develop multiple sites within the schedules for which

they had petitioned. The commission eventually approved 140.465 MW of capacity pursuant to the DR 85-215 rates:

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

Technology	No. Facilities	Gross Capacity
Hydro	23	16.665
Wind	0	0
Wood/Cogen	5	66.2
MSW	4	37.6
Multi-Fuel	1	20.0
Total		140.465

Of these, one MSW project subsequently withdrew its petition in order to sign a private contract (PRS — Derry at 10.3 MW) and the rate for a second project was rescinded for failure to meet the milestones that were a condition of its rate (Vicon at 13 MW).

The DR 85-215 rates were updated in DR 86-134 in July 1986. However, one result of the on-going settlement discussions in the avoided cost methodology dockets, was the realization that the DE 83-62 methodology was inadequate to deal

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with the then existing QF environment. The methodology of the rate calculation assumed PSNH load forecasts, identified an hourly margin of generating units and calculated rates based on the savings achieved when PSNH could avoid operating those units. The methodology did not anticipate the changes in the margin that resulted from the lower load forecast due to the loss of the UNITIL companies as wholesale customers and the addition of significant amounts of QF capacity to the generating mix. Concerned that additional filings under DR 86-134 would only exacerbate the methodological problem and interfere with the investigation into the methodology, the commission suspended DR 86-134 in September 1986.

An outgrowth of the consideration of the petitions filed under DR 85-215, was the adoption of a ranking of categories of QF projects based on their contribution to the public good. The commission accepted the guidance in LEEPA in regard to the state's emphasis on renewable resources and in PURPA on the need to foster a decreased dependence on fossil fuels, and especially on foreign oil, and found that “[n]either [LEEPA nor PURPA] was intended to increase the dependence, particularly of New England, on fossil fueled electrical generation, however efficient that increased generation may be.” The commission further noted that “wood and MSW projects have positive externalities that are also in the public interest.” Report and Order No. 18,530 at 9 (72 NH PUC 8, 10, 11).

[3] This ten year evolution of the QF industry and commission policy in New Hampshire has resulted in a context for the instant order that bears several distinct characteristics. First, the QF industry in New Hampshire is no longer a fledgling industry that needs to be specially encouraged. The number and size of projects proposed and/or approved clearly reflects that New Hampshire possesses a diversified and well-established QF industry with a strong entrepreneurial spirit that will make available new capacity whenever it is economic to do so. One specific implication of the maturity of the QF industry is that the commission does not need

to continue to offer standard long term levelized rates in order to secure capacity needed sometime in the future but not in the present.

[4] Second, based on the projects that have come before us, it is clear that there is a high degree of speculation in the QF industry. Criteria of project maturity must be established to assure that the projects obtaining rates and contracts will be able to provide capacity when it is needed. Only by establishing criteria for maturity at the time of application and monitoring milestones of development can the commission, utilities and ratepayers reasonably rely upon QF project proposals materializing into operating units that will meet the state's long term energy and capacity needs.

[5] Third, the methodology as adopted in DE 83-62 must be modified at least to the extent of providing a better congruence between the amount of capacity measured when the value of capacity is being calculated, and the amount of capacity eligible for the rate based on that calculated value. Since the supply of QFs is highly elastic at certain price levels there is a need to limit the amount of capacity eligible for any particular energy and capacity rate.

[6] Fourth, the QF industry, in terms of technology, size and location, will not automatically maximize the potential benefits to New Hampshire's electric utilities and ratepayers. The original

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Declaration of Purpose in LEEPA states:

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

At any point in time, cost relations may favor a particular technology and economics of scale may encourage an increase in size of individual facilities. If the commission is to ensure that the goals of the LEEPA legislation will be realized, and that the QFs that enter into purchase power arrangements are in fact “small scale and diversified” in relation to each utility's generation mix, the commission must establish guidelines for the categories of facilities it believes best satisfies those goals.

[7] Finally, developers do not choose to locate their facilities based on a coordinated decision to maximize the utilities' highly integrated generation/transmission systems. While some projects are limited to very specific locations (*e.g.* low head hydroelectric), other projects have available greater choice of location. The commission must assure that utilities provide sufficient information regarding load centers and transmission lines that will make it possible for the QFs to better coordinate their location decisions with the needs of the utility system.

B. *Reports of the resource plan and analysis required to establish the framework for QF rates and negotiations*

[8-10] Given the goal that further encouragement of the QF industry be in the context of overall utility long term resource planning, it is necessary to institute a consistent process to enable the commission to evaluate all utility resource investment options including purchases of QF power. Therefore, each utility will be required to file an integrated least cost resource plan in conjunction with updated forecast of avoided costs in order that the commission may reasonably

review each utility's planning process, resultant plans, and avoided cost forecast. The objective of the integrated least cost resource plan is to satisfy future demand with the optimal combination of supply-side resources and demand-side programs. Thus, the plan must provide a comprehensive and detailed assessment of all reasonably available demand-side and supply-side utility investment options to satisfy ratepayer's energy service needs at the lowest overall cost consistent with the reliable supply of electricity. Overall cost in this context includes compliance with public policies in regard to environmental and social concerns as well as financial considerations.

We will require the utilities to provide the reports and analyses of the integrated least cost resource plan to the commission by April 15th, biennially in even numbered years. Based on these reports and information developed through testimony, the commission will establish a framework for QF long term rates and private negotiations. As further discussed herein, this framework contemplates a much expanded role for private negotiation between QFs and utilities, based on utilities' long term resource planning. Our endeavor is to create a public forum in which the utilities explain their planning criteria and assumptions. This forum will both ensure regulatory oversight of the resource plans and make available information needed by QFs to compete effectively with the utilities' other resource options. It will also ensure

that the criteria and assumptions applied by the utility in negotiations are the same that it uses to judge its own resource options.

In the biennial filing each utility shall develop and support the following seven areas of major reports and analysis and such additional areas as the commission may notice.

1) Forecast of future demands
2) Assessment of demand-side options
3) Assessment of supply-side options
4) Assessment of transmission constraints and requirements
5) Integration of demand-side and supply-side options
6) Two-year implementation plan and forecast
7) Avoided cost forecast

These seven areas of analysis require assumptions and forecasts of the future. The utility must forecast the demand for electricity, the various utility supply-side and demand-side resource options available to meet this demand, and the prices and rate inputs associated with plausible planning scenarios. Additionally, the utility should assess, and explicitly treat in the analysis, the risk and uncertainty of the forecast scenarios and their sensitivity to various assumptions. These reports should be consistent with the Annual Report filed with the Bulk Power Supply Facilities Committee and other reports and analysis used by the utilities for ratemaking and investment decisions. Finally, each utility will derive an updated forecast of avoided costs consistent with the other reports and analysis contained in the filing.

1) Forecasts of Future Demands

Each utility will file a 15 year forecast of capacity and energy, at the parent and/or full requirements supplier level of aggregation as well as at the subsidiary and/or distribution level. The utilities should file a minimum of three forecasts representing a plausible range — high, low, and “probable” — with the probable to represent the utility's most likely set of future events. The various forecasts should be utilized to show the sensitivity of resource option scenarios to varying levels of demand in the treatment of risk and uncertainty. While we will not prescribe a forecasting methodology at this time, we will require that the methodology employed by each utility be able to evaluate the effect of price and demand-side resource planning decisions (*i.e.* conservation, load management) on the forecast of future demands. Further, the forecasting methods employed by each utility should be consistent with methods used by the utility for other corporate planning and investment decision making.

2) Assessment of Demand-Side Options

The integrated least cost resource plan should demonstrate that the utility and/or its power requirements supplier has adequately assessed all reasonably available utility sponsored demand-side resource options to satisfy ratepayers' energy service needs. Each utility should develop and implement costs and benefits tests for evaluating and ranking potential new utility sponsored conservation and load management programs. The demand-side option assessment should include an explicit accounting of price induced demand reductions, and reductions in demand from the continuation of existing utility and government sponsored demand-side programs. The commission expects that each utility will make use of the plethora of

demand-side program information and data available in the electric utility industry. The objective of the assessment is to identify all cost-effective demand-side options.

3) Assessment of Supply Options

Each utility should assess the wide range of utility supply-side resources available to meet ratepayers future energy service needs, including plant re-powering or life extension, bulk power purchases, non-traditional utility generation sources, and conventional plant construction. The utility may include an assessment of the expected amount of QF capacity to be provided under existing arrangements and/or power on an as-available basis; however, incremental firm QFs should be excluded from the supply assessment and the utility's resource plan. The utility should employ a variety of models or methods to assess these supply options, including production costing and reliability models as well as risk analysis models or methods. We will require that the minimization of the present worth of future revenue requirement form a basic criterion used to select and prioritize these supply options.

4) Assessment of Transmission Requirements, Limitations and Constraints

Each utility should provide a detailed assessment of the forecasted transmission requirements, limitations and constraints over the planning period. This assessment should include a map indicating load center concentrations, transmission limitations and constraints, and planned and proposed changes to the transmission system within the franchise area during the

forecast period. The utility should provide an evaluation of how new generation, regardless of ownership, will be incorporated into the transmission grid and the consequences of additional generating sources for the transmission system.

5) Integration of Demand-Side and Supply-Side Resource Options

Each utility should develop a formal process for the integration of cost effective utility sponsored demand-side programs and supply-side resource options and demonstrate that the utility has considered all aspects of its resource needs. Under this process demand-side programs and supply-side resource options should be evaluated in a dynamic iterative process that considers risk, sensitivity, and uncertainty factors. The objective of this analysis is to determine the optimal mix of resources that will provide ratepayers' energy service needs at the least cost consistent with the reliable supply of electricity.

6) Two-Year Implementation

The commission requires that each utility submit a consistent two-year “action” plan designed to detail how the long term integrated least cost resource plan will be developed and implemented in the first two years. This action plan should include a short-term forecast (2-year) of capacity and energy requirements at the parent and/or full requirement supplier level as well as at the subsidiary and/or distribution utility level of aggregation. The utility should demonstrate how the optimal “mix” of utility sponsored demand-side programs and supply-side resources will be developed and implemented during the forthcoming two year planning period. The plan should specify all new and existing models, data, equipment, personnel, and

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facilities that the utility intends to utilize and/or require in the implementation of the plan.

7). Avoided Cost Forecasts

In conjunction with biennial filing of the reports and analysis discussed above each utility will file a 15 year forecast of avoided cost and all supporting data. This forecast should be based on the utility's most likely scenario as identified in these reports and analysis. Further, the methodology for forecasting avoided costs should be consistent with the methodology adopted by this commission in Phase I. However, unlike the Phase I settlement process, the calculation of avoided costs will derive from the respective utility's integrated least cost resource plan as reviewed by the commission in a biennial update proceeding that will follow the filing of the reports and analyses. Those avoided costs will provide the maximum price for all QF purchase power arrangements. As further discussed below, QF purchase power rates under this policy will vary according to whether or not a utility will potentially be able to defer or cancel some future utility resource because of QF power.

By deriving each utility's avoided costs from an integrated least cost resource plan we ensure that the Phase I methodology will identify the most cost-effective way that the utility could generate power to meet its system requirements in the absence of QFs. Such cost-effective resource additions will constitute the costs that are potentially avoidable by QFs. In the alternative, if the integrated least cost resource plan does not identify any future utility resources that the QF can displace, the avoided costs would be based on the properly calculated short-run

avoided costs of the utility.

Under the Phase I methodology, the short-run avoided cost of the utility would be determined by using the decrement method in the production costing modeling of the utility. This method requires two production costing runs. The first run is a simulation of production costs without incremental QF as a "base case"; the second run, involves the reduction of load in the amount of the decrement adopted for each utility in Phase I. As discussed in our report in Phase I of this docket the decrement method is analogous to the definition of avoided costs in that it calculates the difference in cost with and without a specified block of QF power.

In the alternative, if the utility were able to defer or cancel some future resource addition because of the availability of QF power, then the avoided costs would be based on the capital and operating costs of those avoidable utility resources. The Phase I methodology incorporated the operating cost and capitalized energy saving of a new base load Integrated Gasified Combined Cycle (IGCC) proxy or reference unit as the avoidable resource that QFs could allow all the utilities to avoid. The crux of the integrated least cost planning derivation of avoided costs that we envision herein is the identification by each utility of the proxy or reference unit(s) that would be cost effective when added to the utility's system and would be potentially avoidable by purchases of QF power. That is, such an avoidable proxy or reference unit should be incorporated by each utility into its avoided cost estimate at the point that it is the least cost resource option as identified in the utility's biennial filing.

C. *Commission Hearing and Review*

The commission will hold hearings and will review, *inter alia*, the adequacy and reasonableness of each utility's integrated least cost plan reports and analysis as well as the calculation of avoided costs. If the utility does not anticipate the need for additional utility resources that the QF can displace within the first 8 years of the planning horizon, it will file the following information:

1. Testimony to demonstrate that assessment.

2. Testimony documenting the company's integrated least cost resource plan for providing all aspects of its energy resource needs.

If following our review of the utility's integrated least cost resource plan the commission finds that no utility resources can be potentially avoided by QFs in the first 8 years of the forecast period, the commission will not require the utilities to develop and implement a long term purchase power negotiation procedure.

If the utility's integrated resource plan identifies additional utility resources that are potentially avoidable by purchases from QFs within the first 8 years of the planning horizon, the utility will file the information required above plus:

3. Testimony documenting a private contracting and negotiation procedure for securing purchase power arrangements with QFs.

Based on our review of the various reports, analyses and testimony, the commission will

determine the appropriate utility resource additions that can be potentially avoided by QFs, and, if any, the MW amount of QF purchase power arrangements each utility should be seeking.

D. *Process and Rates, Terms and Conditions of Purchase Power Arrangement*

[11] 1). Pricing when the commission determines that QF purchases cannot displace a utility resource option

If the commission's determination is that QFs cannot allow the utility to avoid any resources during the first eight years of the planning period the utility will only be required to offer QF's an as-available short-term energy and capacity rate. Thus, if the utility does not require long term capacity and the only benefit of new QF power is fuel savings/source diversity and the sale of capacity into NEPOOL, the utility will only be required to offer QF's the as-available short term energy and capacity rate.

Therefore all utilities are required to file short term rates in conjunction with their Fuel Adjustment Clause/Purchase Power Cost Adjustment or Energy Cost Recovery Mechanism proceedings (presently once a year for ConVal, every six months for all other utilities). The short term energy and capacity rates should be calculated consistent with the methodology adopted in Phase I. Therefore, the energy rate should be calculated using the production costing decrement method adopted in Phase I, so that each utility's biennial short term avoided cost forecast report will provide the utility's “most likely” projection of short term avoided costs rates. The short term capacity rate should be based on the utility's best estimate of the market value of peaking capacity in NEPOOL. QF capacity eligible for capacity payments will be determined by the commission according to standards set forth in Dockets

DE 78-232, DE 78-233, and DE 79-208.

[12] The commission will continue the existing arrangements established in *Re Purchases for Non-generating Utilities,* 67 NH PUC 825 (1982), whereby non-generating utilities have the option of either purchasing the power or wheeling it at no charge to their requirements supplier. However, we will monitor purchases by utilities on the short term rate. Of particular interest will be each utility's choice of purchases at the subsidiary versus parent, distribution company versus generating supplier levels, especially in relation to the wholesale rate. The commission acknowledges the potential problems of system reliability stability and transmission when very large QFs are added to the smaller systems or load centers. However, we put the utilities on notice that we do not intend our wheeling policy to relieve the distribution companies of their obligation to obtain the least cost supply consonant with system reliability for the benefit of their ratepayers.

2). Pricing when the commission determines that QF purchases can displace a utility resource option

[13] If following review of the utility's biennial integrated least cost resource filing the commission finds that additional utility resources in the first 8 years of the forecast period are potentially avoidable by QFs, the commission will require long term commitments between QF's and utilities. The commission will hereby require the companies to establish a two-tiered

program, and distinguish between the small renewable projects that were the original focus of LEEPA and that add to the diversity of the New Hampshire supply mix, and the projects that are larger and/or based on non-renewable fuel sources. We also note that the transaction costs for individual negotiations can overwhelm any benefits of commitments with smaller projects for both the developer and the utility. Therefore we will require utilities to make a standard offer to the smaller projects based on renewable resources while individually negotiating with projects that are larger and/or based on non-renewable fuel sources.

a. *Standard Offer*

"[14, 15]" i. Projects less than 100 KW may be developed only on the standard short term rate.

ii. Utilities will be required to make available long term standard offers for those projects that have an installed capacity of 100-1000 KW *and* are based on renewable resources. In order to be eligible to apply for the standard offer, the QF must demonstrate the following indications of project maturity: site control, FERC license or exemption (hydroelectric), approved necessary state environmental and local permits, a detailed plan of the proposed financing for the project, a plan of construction including a timetable, and plans or agreements for the reliable operation of the project during the term of the standard offer. While projects are eligible for full avoided costs, any front end loading must be negotiated with the utility. In no case will the project's total front end loading exceed the project's capital cost. Further, the QF must provide a cash or cash equivalent security equal to 10% of the expected total front end loading.

Each utility will file with the commission a standard contract format including the terms and conditions of the interconnection and the power purchase. The standard agreement will specify the timing of payments by the QF for the

interconnection study and the interconnection.

The standard offer must incorporate the following characteristics. The rate will be equal to the projected cost of the avoidable resource(s) identified in the generating utility's long run integrated resource plan. The term of the rate should be the lesser of 15 years or 3 years beyond the term of the QF's financing. QF's may apply for rates whose initial years are the first three years of the stream of the adopted avoided costs.

b. *Private Contracting and Negotiation*

[16] The utilities will establish a private contracting and negotiation procedure for all other QF's larger than 1000 KW and/or based on fossil fuel.

The utilities will identify the MW amount of utility resources in its integrated resource plan that can be potentially displaced or delayed following a projection of QF capacity available under the as-available short term rates and its long term standard offer. Based on the guidelines established by the commission following the hearing on the utility's biennial integrated least cost resource filing, the utilities will develop and implement a procedure for negotiating with QF's offering to provide energy and capacity. The negotiations will use as a benchmark the projected cost of the avoidable resource(s) identified in the generating utility's resource plan, but are not

required to contract at full avoided cost nor adhere to the specific terms and conditions of the standard contract. Negotiable terms may include *inter alia*, price, front end loading, security arrangements, dispatchability, and timing of the QF capacity addition. The utilities will file the negotiated contracts with the commission. They will also provide an annual report on the status of negotiations with QF's including both the committed capacity and rejected proposals.

The commission notes that the utilities retain their obligations to provide safe and reliable service to their ratepayers. These obligations include the provision by the utility of adequate supplies of capacity as required. Thus, it remains the responsibility of the utility to monitor its supply of capacity, from QFs as well as other sources, to assure that the capacity is available as needed. To this end the utilities should formulate milestones during the development stage as well as performance reviews for QF's that have attained commercial operation. These milestones and performance reviews should apply to all QFs, both those on standard offers as well as those under negotiated contracts.

The commission will schedule a workshop for the parties in the instant docket for the purpose of establishing a timetable and addressing any questions concerning the utility's biennial integrated least cost resource filing. For the year 1988 we are waiving the requirement that the plan must be filed by April 15, 1988.

Our Order will issue accordingly.

ORDER

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

ORDERED, that the policy issues surrounding the translation of the PHASE I and II avoided cost methodology into long term purchase power arrangements between the state's electric utilities and QFs shall be as provided for in the foregoing report; and it is

FURTHER ORDERED, that consistent with this policy, each utility shall provide the reports and analysis (including updated long term avoided cost estimates) of the

integrated least cost resource plan to the commission by April 15th, biennially in even numbered years; and it is

FURTHER ORDERED, that the April 15th, 1988 filing date required by this report and order is hereby waived pending a workshop for the parties to establish timetables and address questions concerning the instant order; and it is

FURTHER ORDERED, that the commission will direct its staff to contact the parties to this proceeding for purposes of scheduling said workshop within one month of the date of this order.

By order of the Public Utilities Commission of New Hampshire this seventh day of April, 1988.

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73 NH PUC 133

Re Southern New Hampshire Water Company

Additional party: Manchester Water Works

DE 87-217
Order No. 19,053

New Hampshire Public Utilities Commission

April 8, 1988

ORDER amending prior decision approving wholesale water and construction agreements. For prior order see 73 NH PUC 81.

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1. WATER, § 12 — Construction and equipment — Improvements to distribution system — Allocation of costs — Construction agreement.

[N.H.] In reviewing a contract between two water utilities for the construction of water facilities, the commission found that to the extent that larger water mains that constituted excess capacity to the first utility were used and useful to the second utility, the mains would be viewed as improvements made to the second utility's distribution system, and the first utility would be allowed credit for the cost of those improvements. p. 135.

2. VALUATION, § 211 — Excess capacity — Rate base disallowance — Water utility.

[N.H.] Where a water utility did not prove that 16-inch water mains were necessary for the provision of service, it was found imprudent for the utility to have negotiated the provision of the contract that obligated it to pay for a larger main than was necessary to serve its customers; therefore, the costs associated with the difference between the larger mains allowed under the contract and those found necessary by the commission, were disallowed from the utility's rate base until such time as the utility could prove that larger mains were a reasonable choice in the provision of service to its customers. p. 135.

By the COMMISSION:

REPORT ON MOTION FOR REHEARING

This report concerns a joint motion for rehearing by Southern New Hampshire Water Company and Manchester Water Works of *Re Southern New Hampshire Water Co.* DE 87-217, report and order no. 19,021 (February 25, 1988) (73 NH PUC 81). In that order we approved the proposed wholesale water and construction agreements subject to certain exceptions. Upon

consideration of the motion we affirm our approval of the contract but alter our decision concerning the exceptions.

The following is a discussion of the relevent factual background. On October

30, 1987 Manchester Water Works (Manchester) filed a proposed wholesale water contract and construction contract, pursuant to RSA 378:19 and N.H. Admin. Code Puc § 1601.02. The contracts were entered into between Manchester and Southern New Hampshire Water Company (Southern).

By report and order no. 19,021 the commission found the contracts to be just and consistent with the public good with exceptions and, therefore, approved the contract subject to the following changes:

(1) that Manchester and Southern would perform hydraulic studies to determine the main size capacity necessary for the provision of service,

(2) that Southern would bear only the cost responsibility for the pipe size necessary to provide its service,

(3) that the cost allocation made to determine the responsibility of Southern for improvements made to the Manchester distribution system be submitted to the commission for prior approval, and

(4) that any excess payments made by Southern under section 307 of the contract, the Merrimack Source Development Charge (MSDC), shall be subject to annual refunds if actual consumption is less than the estimated amount billed.

On March 16, 1988, Southern and Manchester filed a joint motion for rehearing pursuant to RSA 541:3, together with supplementary testimony in support of the motion. The motion requests a rehearing on two grounds: it avers that the commission misunderstood what the parties had agreed to and that the exceptions to the contract imposed by the commission would jeopardize the implementation of the contract. The supplemental testimony provides an offer of proof of additional facts in support of the contract as proposed.

The movants aver that the commission's order incorrectly found that the movants had agreed to exceptions number two and four. The movants also contend that if the comission requires Southern to pay only for the pipe size necessary to provide its service, Manchester might not be able to perform under the contract. The movants assert that the provision of the contract concerning MSDC charges is a compromise that was difficult for Manchester and Southern to reach and that this contract provision is more advantageous than the existing tariff provisions which require up front payments based on estimated usage.

In its supplemental testimony, the movants attempt to give additional arguments to support the contested contract provisions (numbers two and four above). In addition, they make the argument that the commissison may disallow costs associated with these provisions in Southern's next rate case.

Under RSA 541:3 the commission may grant a rehearing where there is a “good reason” to

do so. While we do not find in the motion any good reasons to rehear the case, we will reconsider and modify our original decision. We still find the contract to be just and consistent with the public good with certain exceptions. Therefore, we approve the contract subject to the changes discussed below.

In our report we approved the contract subject to three changes that the parties agreed to, specifically exceptions number one through three above. The commission's finding that the parties had agreed to number two above is in error as that finding is not supported by the record.

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The contract requires Southern to pay for the entire size of the main installed, regardless of whether some of Manchester's customers will utilize the main. Manchester argues that this provision of the contract is necessary because Manchester does not have the ability to finance the costs of large transmission mains. It alleges that capital improvements such as the addition of large diameter transmission mains are paid for out of its current revenue.

[1] We continue to find that the provision of water to Southern is necessary to serve Southern's customers needs. We do not wish to impose restrictions on the contract that will have the effect of destroying the contract. For that reason, we will not require that, under the contract, Southern pay only for the portion of the main that it actually uses. To the extent that the excess capacity of the large mains is used and useful to MWW in the provision of service to its customers we will view this as improvements made to the Manchester distribution system and allow Southern credit for this cost in our review of cost allocation (see item (3) of (4) on page 134 of this report.)

[2] However, Southern did not prove that sixteen inch mains were necessary for this provision of service. We find that it was imprudent for Southern to have negotiated the provision of the contract that obligated it to pay for a larger main than is necessary to serve its customers. Therefore, we disallow from inclusion in Southern's rate base the cost associated with the difference between the larger mains allowed under the contract and those found necessary by the commission in light of the hydraulic analysis until such time as Southern can prove that larger mains are a reasonable choice in the provision of service to its customers.

The challenged report and order also ruled that excess payments under the MSDC shall be subject to annual refunds. However, the commission did not base this decision on any finding that the change in the contract was agreed to by the parties. Therefore, the movants' argument that the commission misunderstood the agreement of the parties with respect to this issue is specious, and that portion of the motion is denied.

The movants have not alleged that the requirement of this refund will have the effect of making either party unable to perform. In addition, we find no difference between the tariff charges for the MSDC and the contract charges for the MSDC. Therefore, we will uphold our original decision about the refund of excess payments under the MSDC. We will also require the parties to file a methodology for the calculation of this refund on May 6, 1988.

In its supplemental testimony Southern argues that the commission can deal with the concerns that it has about the contract in a rate case proceeding. We do not feel that it is

appropriate for us to leave these problems for a rate case.

Southern also attempts to offer factual information in its supplemental testimony. At best, this testimony is equivalent to an offer of proof. The factual information includes two types of information: (1) information that is already in the record, and (2) information concerning contracts for which negotiations have not been completed and which have not been filed with this commission for approval. We will not reconsider the information that is already in the record. The offer of proof concerning the negotiations does not rise to a sufficient level of proof to require our consideration.

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ORDER

Upon consideration of the foregoing REPORT ON MOTION FOR REHEARING, which is made a part hereof, it is hereby

ORDERED, that the motion of Southern New Hampshire Water Company and Manchester Water Works for rehearing is denied and that the commission's final order no. 19,021 is amended consistent with the foregoing report.

By order of the Public Utilities Commission of New Hampshire this eighth day of April, 1988.

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NH.PUC*04/08/88*[51967]*73 NH PUC 136*Portsmouth Cellular Limited Partnership

[Go to End of 51967]

73 NH PUC 136

Re Portsmouth Cellular Limited Partnership

DE 87-126
Order No. 19,054

Re JHP Partnership

DE 87-136
Order No. 19,054

Re Starcellular

DE 87-137
Order No. 19,054

Re Manchester NECMA Limited Partnership

DE 87-154
Order No. 19,054

Re Portsmouth Cellular Limited Partnership

DR 87-193
Order No. 19,054

Re Manchester NECMA Limited Partnership

DE 87-222
Order No. 19,054

Re American Mobile Communication

DE 87-237
Order No. 19,054

Re Manchester NECMA Limited Partnership

DR 87-257
Order No. 19,054

Re Starcellular

DF 88-25
Order No. 19,054

Re Starcellular

DR 88-27
Order No. 19,054

New Hampshire Public Utilities Commission

April 8, 1988

ORDER exempting cellular mobile radio telecommunications services from regulatory oversight.

PUBLIC UTILITIES, § 117 — Jurisdiction and powers — States and legislatures — Cellular mobile radio telecommunications services.

[N.H.] Because the legislature determined

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that the regulation of cellular mobile radio telecommunications services was not in the public interest, the commission closed all investigations concerning the provision of cellular services and held that all orders issued pertaining to such services shall be null and void.

By the COMMISSION:

ORDER

WHEREAS, on March 31, 1988, the Governor of the State of New Hampshire signed an act which would amend RSA 362:6 to exempt providers of cellular mobile radio telecommunications services from the regulatory authority of the Public Utilities Commission; and

WHEREAS, in the captioned proceedings, the commission has sought to investigate and make orders that have the effect of regulating cellular radio telecommunications services; and

WHEREAS, although the effective date of the bill is May 10, 1988, it is apparent that the legislature determined that the regulation of cellular radio telecommunications services is not in the public interest; it is hereby

ORDERED, that the captioned dockets shall be closed and all investigations concerning the provision of cellular services ceased; and it is

FURTHER ORDERED, that all commission orders in the captioned cases shall be null and void.

By Order of the Public Utilities Commission of New Hampshire this eighth day of April, 1988.

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NH.PUC*04/08/88*[51968]*73 NH PUC 137*Contribution In Aid of Construction

[Go to End of 51968]

73 NH PUC 137

Re Contribution In Aid of Construction

DF 87-113
Order No. 19,055

New Hampshire Public Utilities Commission

April 8, 1988

ORDER preventing utilities from charging contributors for increased taxes on contributions in aid of construction (CIAC) due to Tax Reform Act of 1986 and requiring use of normalization accounting to recover the cost over the tax life of the CIAC-related plant addition.

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1. VALUATION, § 250 — Property included or excluded — Contributions in aid of construction — Customer connection fees.

[N.H.] Contributions in aid of construction (CIAC) are any item or items contributed to a regulated public utility to the extent that the purpose of the contribution is to provide for the expansion, improvement, or replacement of the utility's facilities; customer connection fees are specifically excluded from the definition of CIAC, and such fees include any payment made to

the utility for the cost of installing a connection from the utility's main line to the customer's line as well as any amount paid as a service charge for stopping and starting service. p. 140.

2. VALUATION, § 250 — Property included or excluded — Contributions in aid of construction — Tax Reform Act of 1986.

[N.H.] Prior to the Tax Reform Act of 1986 (TRA), amounts were excluded as a contribution to the capital of a utility if the amounts of money or other property constituted a contribution in aid of construction (CIAC), but with the effective date of that act, the exclusion for contributions was repealed; the TRA provides that a nontaxable capital contribution does not include CIAC or any other contribution as a customer or a potential customer, therefore such contribution must be treated as an item of

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income. p. 140.

3. VALUATION, § 248 — Property used or useful — Contributions in aid of construction — Property or money — Used to encourage provision of service.

[N.H.] Congress has stated that it intends that a utility report as an item of gross income the value of any property, including money, that it receives to provide, or encourage the provision of services to or for the benefit of the person transferring the property; a utility is considered as having received property to encourage the provision of service if the receipt of the property is a prerequisite to the provision of the services, if the receipt of the property results in the provision of services earlier than would have been the case had the property not been received, or if the receipt of the property otherwise causes the transferor to be favored in any way. p. 140.

4. ACCOUNTING, § 19 — Methods of accounting — Contributions in aid of construction — Utility accounting versus tax accounting.

[N.H.] The basic difference between the treatment accorded contributions in aid of construction (CIAC) for utility accounting purposes and for tax accounting purposes is that for utility accounting purposes the contribution continues to be offset against the appropriate plant account or is recorded as a CIAC creating a rate base deduction, while for tax purposes, the CIAC is recorded as income; however, depreciation is allowed to be recovered on the CIAC over the tax life of the associated asset, so that the depreciation basis is lower for cost of service purposes than for tax purposes. p. 141.

5. EXPENSES, § 114 — Federal income tax — Contributions in aid of construction — Tax Reform Act of 1986.

[N.H.] It was held that the proper manner for utilities to recover the increase in federal income tax directly applicable to change in tax status of contributions in aid of construction resulting from enactment of the Tax Reform Act of 1986, was to order prepayment by the utility of the increase in tax and recovery of that tax over the tax life of the CIAC related plant addition; that method was found to be the most appropriate because: (1) it is in the public good; (2) it is the easiest to administer; and (3) it complies with both the Internal Revenue Code and commission precedent. p. 149.

6. EXPENSES, § 114 — Federal income tax — Contributions in aid of construction — Appropriate taxable entity.

[N.H.] The commission does not believe that it is appropriate to ask a contributor to pay the tax on the contribution in aid of construction, because if such a tax were required, an additional tax upon the tax would be assessed thereby increasing the cost of society as a whole, with no apparent benefit to anyone except for increased tax flow. p. 149.

7. EXPENSES, § 114 — Federal income tax — Contributions in aid of construction — Effect of prepayment on cash flow.

[N.H.] Because a majority of utilities expressed concern about the possible negative effect that prepayment of contributions in aid of construction (CIAC) related tax could have on a utility's cash flow, the commission ruled that if a small water utility has problems raising funds, that the commission would consider a policy of allowing taxes on CIAC to be collected, but as tax benefits are realized, refunds would be made to the contributor. p. 150.

8. REPARATION, § 15 — Grounds for allowing — Unlawful charge — Tax on contributions in aid of construction.

[N.H.] Those utilities that had inappropriately charged contributors for the tax on contributions in aid of construction (CIAC) were ordered to make refunds of those amounts, but without interest, because the CIAC collected had artificially reduced the cost of service that

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otherwise would have been paid by the consumers of the utility. p. 150.

9. VALUATION, § 250 — Property used or useful — Contributions in aid of construction — Benefit of person or public — Facility relocation — Small power interconnection.

[N.H.] If it can be shown that a particular payment received by a utility does not reasonably relate to the provision of services by such utility to or for the benefit of the person making the payment, but rather relates to the benefit of the public at large, then the payment is not treated as a contribution in aid of construction, and the same principle would hold true in the case where a utility is being reimbursed for the costs of relocating utility lines to accommodate the construction or expansion of a highway and not for the provision of utility services; also, because small power producers and cogenerators are considered utilities, their fees paid for interconnection are not taxable to the customer providing the interconnection facilities. p. 150.

By the COMMISSION:

REPORT

I. *History*

On June 22, 1987 the commission issued its Order No. 18,725 (72 NH PUC 236) wherein the commission elicited comments on four statements concerning the change in the tax laws through the Tax Reform Act of 1986 (TRA). More specifically, the commission cited concerns about

contributions-in-aid-of-construction (CIAC) and the change in its tax treatment from a reduction in a depreciable asset's taxable basis to revenue recorded in the year received.

In said Order the four statements for which all New Hampshire utilities, except telephone utilities, were to provide comments were as follows:

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.

Utilities were given sixty-five days to respond to the Order. Fifteen utilities and other interested parties, submitted position papers on the above cited statements. The parties were: Granite State Electric Company, Connecticut Valley Electric Company, Public Service Company of New Hampshire, New Hampshire Electric Cooperative, Inc., Unitil Service Corporation, Manchester Gas Company, Gas Service, Inc., Concord Natural Gas Corporation, Hampton Water Works Company, Hanover Water Works Company, Pennichuck Water Works, Consumers Water Company for Southern New Hampshire Water Company, Birchview By the Saco, Inc., Pittsfield Aqueduct Company, Home Builders Association of New Hampshire,

and the commission staff.

Under the prior tax law, amounts were excluded as a contribution to the capital of a utility if the amounts of money or other property:

1. Constituted a “contribution-in-aid-of-construction;

2. Satisfied the expenditure rule; and

3. Were excluded from the utility's rate base for ratemaking purposes.

[1] Contributions-in-aid-of-construction are any item or items contributed to a “regulated public utility” to the extent that the purpose of the contribution is to provide for the expansion, improvement, or replacement of the utility's facilities (Prop. Reg. Sec. 1.118-2(a)). A “regulated public utility” is a utility required to furnish electrical energy, gas, water or sewage disposal services to members of the general public (I.R.C. Sec. 118 (b)(3)(c)). Customer connection fees are specifically excluded from the definition of contributions-in-aid-of-construction. The term “customer connection fee” includes any payment made to the utility for the cost of installing a connection from the utility's main line to the customer's line as well as any amount paid as a service charge for stopping and starting service.

A contribution-in-aid-of-construction can take many forms. Three examples were set forth under the proposed regulations:

1. A developer constructs the facility (e.g., water lines and a water tower) and turns the facilities over to a utility;

2. A developer furnishes the necessary funds to the utility to construct the facilities; and

3. A municipality pays a utility to relocate facilities which are being destroyed in connection with a road project. (Prop. Reg. Sec. 1.118 2(a)(2)).

The proposed regulations also provide by inference that refundable advances are included within the definition of a contribution-in-aid-of-construction. An example of a refundable contribution would be a cash contribution by a developer to a utility for utility construction subject to an agreement that a percentage of the receipts from the facility over a fixed period will be refunded to the developer.

"**[2, 3]**" Effective January 1, 1987, the Tax Reform Act repealed the exclusion for contributions. The Act provides that a nontaxable capital contribution does not include a contribution-in-aid-of-construction or any other contribution as a customer or a potential customer. Such contribution must be treated as an item of income. Congress has stated that it intends that a utility report as an item of gross income the value of any property, including money, that it receives to provide, or encourage the provision of services to or for the benefit of the person transferring the property. A utility is considered as having received property to encourage the provision of service if the receipt of the property is a prerequisite to the provision of the services, if the receipt of the property results in the provision of services earlier than would have been the case had the property not been received, or if the receipt of the property otherwise causes the transferor to be favored in any way.

A reading of the statute leads to the conclusion that contributions which were previously defined as

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contributions-in-aid-of-construction are no longer excluded from income under Section 118. There are many examples of contributions and relocation payments, refundable advances, contributions of tangible property, and monetary contributions are included in the definition of contributions-in-aid-of-construction. All of these items are taxable under the Tax Reform Act of 1986.

Utilities are allowed to receive CIAC from their customers by existing rates and tariffs authorized by the N.H.PUC. Contributions are also received by special arrangements, such as, highway relocations and street lighting. Contributions include both cash and property. Generally, contributions are non-refundable. However, certain contributions under extension rules are refundable for a certain period of time. These contributions are referred to as refundable advances. Under the Uniform System of Accounts for electric utilities non-refundable CIAC are credited to the appropriate plant accounts. Therefore, the cost of the facilities installed is offset by the amount of the contribution. Under the Uniform Classification of Accounts for Gas and Water Utilities non-refundable contributions are recorded in a separate account (Account 265)

and used to reduce rate base in the context of determining rates. For income tax purposes, the basis for depreciation was the net cost to the utility under the previous statute. Refundable advances are credited to the appropriate plant account and for ratemaking purposes are applied as a deduction from the utility's rate base. If the advances are not refunded or only partially refunded within the time limit prescribed by the tariffs, the remaining balance is credited to the appropriate plant account and treated as a non-refundable CIAC.

[4] A basic difference arises between the treatment accorded CIAC for utility accounting purposes and for tax accounting purposes. For utility accounting purposes the contribution continues to be an offset against the appropriate plant account or is recorded as a contribution-in-aid-of-construction creating a rate base deduction. For tax purposes, the CIAC is recorded as income. However, depreciation is allowed to be recovered on the CIAC over the tax life of the associated asset. Therefore, the depreciation basis is lower for cost of service purposes than for tax purposes.

II. *POSITION OF THE PARTIES*

A. *Connecticut Valley Electric Co., Inc.*

Connecticut Valley Electric Co., Inc. (Conn. Val.) states the increase in taxable revenue from contributions-in-aid-of-construction would be $35,908. This creates an increase in tax expense of $14,363 for the 1987 fiscal year.

Conn. Val. proposes to record the increase in tax expense as a deferred asset to be amortized over the tax life of the plant addition. Accordingly, it has not charged customers for tax accrued on 1987 contributions. The deferred asset will be added to rate base and the Company will earn a return on the asset's remaining balances until it is fully amortized.

B. *New Hampshire Electric Cooperative, Inc.*

The New Hampshire Electric Cooperative, Inc. responded to the commission Order No. l8,725 (72 NH PUC 236) by stating that it is a non-profit entity and the tax laws or changes thereto have no effect on its operations.

C. *Granite State Electric Company*

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Granite State Electric Co. (Granite or the Company) presented three scenarios describing the options it believes the commission can reasonably choose from. The first scenario, called Policy A, assumes one hundred percent of the increase in income taxes from contributions will be charged to the contributor. The second scenario, Policy B, charges a portion of the increase in income taxes to the contributor and the balance would be recovered through the cost of service. This is a complicated calculation requiring either the determination of the aggregate present value of the CIAC tax depreciation benefits or the cumulative present value of the revenue requirements for CIAC. The third scenario, Policy C, does not charge the contributor for the increase in income tax and defers the tax paid. This method increases the Company's overall cost of service.

Granite further provides a guide or the effect each of these scenarios has on:

A) the customer benefiting directly from the CIAC plant additions;

B) the Company's general customer base; and

C) Society as a whole.

Each of the scenarios were rated by the cost to the category above.

Policy A was most expensive to the customer benefiting from the CIAC plant addition, provided a subsidization to the Company's general customer base and was most costly to society as a whole. Policy B provides a lesser cost than Policy A to the customer benefiting from the CIAC plant addition, provided no cost to the Company's general customer base, and a lesser cost to society than Policy A. Policy C was least expensive to the customer benefiting from the CIAC plant addition, applied the most cost to the Company's general customer base and was least costly to society as a whole.

After evaluating the pros and cons for each scenario the Company concluded that there is no "clear-cut winner". Granite, therefore, did not provide a recommendation, its only request was that the commission's decision support the normalization of accounting for CIAC transactions.

D. *PSNH*

PSNH has proposed a policy whereby it will collect additional costs incurred as a result of the taxability of contributions from the contributor. PSNH will analyze the cash flow of the total contribution (the up front contributions tax payment net of the depreciation benefits realized over the tax life of the underlining asset) and charge an amount over the contribution equivalent to the net present value of the cash flows.

PSNH claims that its proposed policy will hold remaining customers harmless to the transaction. Their policy states that the contributions "should take into account the net of additional electric revenues to be received and additional costs to be incurred as a result of the transaction." They aver that the contributor should make a contribution to cover the cost of the transaction and that taxes should be part of the calculation on both an economic and cost basis. PSNH proposes to apply a rate of 25.97% to all contributions. That rate is developed using a 20 year tax life, a 34% federal income tax rate and a discount rate of 14.94%, the rate of return allowed in the most recent rate case (Docket No. DR 86-122).

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The accounting treatment of taxes on contributions proposed by PSNH is different from all of the other responders. PSNH proposes to record the present value of the tax portion of the contribution as miscellaneous non-operating income and to record the payment of the taxes as non-operating income and to record the payment of the taxes as non-operating federal income taxes and non-operating deferred income taxes. The tax benefits from future tax depreciation would be retained by the Company. It claims that treatment of deferred taxes and miscellaneous income would be excluded from ratemaking and be revenue neutral to the general body of ratepayers.

In the most recent rate case (DR 86-122) PSNH provided a technical statement on the Tax

Reform Act of 1986 (Exhibit 23C). That statement took the position that there would be no impact on net operating income as a result of CIAC. The tax amounts would be deferred in the current year and flowed back over the service life. The Company claims in its filing that the commission did not recognize the effect of these transactions in its final order. Therefore, it claims that revenues were not included to support the taxability or the cost of money associated with the taxability of contributions-in-aid-of-construction. As we stated in our report and order in DR 86-122, the rate base calculation is historically based on average test year data. If future deferred taxes were included in rate base we would be violating RSA 378:30a, the anti-CWIP statute. The deferred taxes would be related to future construction and are therefore not included in the rate base calculations. In that case we would not only be including construction work in progress but we would be including future projected construction costs which have not yet been incurred.

E. *Concord Electric Company*

Exeter & Hampton Electric Company

Concord Electric Company and Exeter & Hampton Electric Company, wholly owned subsidiaries of Unitil Corporation (hereinafter collectively referred to as Unitil or the Companies) filed testimony which proposed the “gross-up” method of collecting CIAC from the contributors. This method is modified to net out the future CIAC related tax deductions at their present value, similar to Policy B put forth by Granite in its filing (see above).

Unitil believes this an equitable method to recover the additional tax on CIAC due to the change in the laws. Further, Unitil states its tariffs include language which would permit this method to be implemented immediately without excessive administrative effort. In fact, Unitil claims it has already been charging customers under this methodology because the tariffs allowed such.

Unitil additionally distinguishes between refundable and non-refundable CIAC. The refundable CIAC are amounts held by the Companies temporarily until a developer completed a project. After completion the Companies refund a proportionate amount of the CIAC depending on the number of customers actually utilizing service as compared to the number estimated by the developer when the project was initiated. Unitil suggests that the “gross-up” method, modified, should be utilized with this class of CIAC also. When the refund occurs Unitil will refund the tax also.

Unitil contends that the “gross-up” option is equitable and less discriminatory. It further claims that policy should keep a company's stockholders and other ratepayers as neutral as possible and that

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ratepayers connected through an expensive underground distribution system should contribute to the cost which is in excess of the cost of a conventional overhead service. In the case of a developer, it claims that underground facilities will add to the value of the development and will be realized as lots are sold. Therefore, the company should not be required to increase borrowings, and the ratepayer should not have to support the carrying costs of the taxes.

F. *Concord Natural Gas Corporation*

Gas Service, Inc.

Manchester Gas Company

Concord Natural Gas Corporation, Gas Service, Inc. and Manchester Gas Company, wholly owned subsidiaries of EnergyNorth, Inc. (hereinafter collectively referred to as ENI or the Companies) submitted responses to the commission's inquiries in Order No. 18,725 stating that it does not charge the Contributor the increase in income tax from CIAC. ENI books the additional tax as a deferred asset (prepaid). This deferral will be amortized over the tax life of the CIAC related plant addition.

ENI expressed concerns similar to Unitil (see above) where the Internal Revenue Service (IRS) views both refundable and non-refundable CIAC as taxable. However, ENI has not proposed a method of handling the refundable CIAC other than accepting the IRS view and recording the tax as stated for non-refundable CIAC.

ENI believes that the deferred asset should be recognized as a rate base adjustment in subsequent rate proceedings. Additionally, the working capital should reflect the cash outlay ENI's proposed method incurs. ENI further believes the tax approach of recognizing CIAC as revenue should not be accepted for book or ratemaking purposes.

Finally, the Companies indicated a desire to “explore”, subject to market restraints, the “gross-up” method of charging CIAC.

G. *Northern Utilities*

Northern Utilities (Northern) is presently not charging an income tax liability to its contributing customers. They claim that they have no tariff provisions which would allow them to do so. Northern believes that due to the level of current contributions the most appropriate method is not to pass the increased income tax liability onto the contributing customer.

Northern proposes to pay the tax liability, record a current tax change and reflect an offsetting deferred tax credit. Tax benefits would be received and recorded by the Company in future periods through increased tax depreciation. It would propose to include the resulting deferred tax reserve in the calculation of rate base for ratemaking purposes. This procedure would allow for the carrying costs of the income taxes paid on CIAC to be recovered through the authorized rate of return in a rate case. The carrying costs would be compensated during the period that the utility pays additional taxes and subsequently pays reduced taxes due to increased depreciation benefits.

Northern currently estimates CIAC receipts of $72,000 and a revenue requirement of $2,800 for income tax carrying costs. If future levels of CIAC increase, Northern proposes to reserve the right to pass the increased tax liability to the contributing customer through a support charge.

H. *Pittsfield Aqueduct Company*

Pittsfield Aqueduct Company filed a statement claiming that taxes due on contributions will

not be billed to the Company's ratepayers but will be paid as income taxes in the normal course of business. Pittsfield Aqueduct Company will continue to book the contributions-in-aid-of-construction in NHPUC Account Number 265.

I. *Hanover Water Works Company*

Hanover Water Works Company (Hanover) petitioned the commission to include the tax on CIAC as a direct cost of construction to be borne by the developer. The petition does not specifically address the issues set forth in our order of notice; it only asks that the commission take such action as it deems to be just and in the public interest.

J. *Birchview By the Saco, Inc.*

Birchview By the Saco, Inc. (Birchview) submitted a letter responding to the commission's Order No. 18,725. This letter indicated that Birchview was not charging the additional tax on CIAC because it has not had approval to change its rates. However, Birchview did submit that if the 1986 Tax Reform Act increased the cost to the utility it should be allowed to increase rates.

K. *Pennichuck Water Works*

Pennichuck Water Works (Pennichuck) presented a position that charges the developers (contributor) for the additional tax from CIAC. Pennichuck avers that CIAC should not have a cost effect on other customers in its system; i.e., the effect on rate base should be zero. The taxes from CIAC should be identified with the specific project of the contributor, not the overall system. It claims that this is consistent with past commission practice where CIAC has traditionally reduced rate base. The alternative to this is to increase rate base by requiring the utility to pay the tax and recording the prepaid tax as a reduction to accumulated deferred taxes and ultimately increasing rate base.

Although Pennichuck has not yet charged developers for the tax on contributions, it takes the position that the customer/developer should absorb the tax. They further assert that the increase in tax creates a cash drain on the utility if it is required to pay the tax and that the method that it proposes would relieve that burden. Pennichuck estimates that $150,000 would be paid in additional taxes in the event the utility is required to absorb the cost.

Pennichuck's position does not address the fact that the general body of ratepayers would derive the benefit of future tax depreciation deductions for the amount of the contribution in the event that the contributor paid the tax. Rather than retaining the status quo to the ratepayers, Pennichuck's position creates a benefit to all ratepayers.

L. *Southern New Hampshire Water Company*

Southern New Hampshire Water Company (Southern) presented the three methods discussed by Granite (above). These are: (1) full payment of the additional income tax related to CIAC by the contributor; (2) payment by the contributor of the increase in tax reduced by the cumulative present value of the tax benefit related to the CIAC plant addition; and (3) payments by the utility of all of the increase in tax.

Southern requested an opportunity to use its discretion and alternate between items 1 and 3

as the situation dictated.

Southern states that the third method is advantageous because the accounting is simplified and it allows a water utility to compete with municipalities for future developments. It further claims that the cash flow impact is dramatic and that the company is at risk that future customers who would support the system do not materialize. In the event that there is minimal risk or the company would like to encourage development in certain areas of the franchise, option 1 would be chosen. Method 3 is currently being used by the Company.

Method 1 would not create a negative cash impact to the Company but it would have the disadvantage of creating a distinction between a private and a municipal system. The private company would be less competitive because there is a tax on a tax that has no real economic basis.

Southern claims that Method 2, which would assign a present value to the future tax benefits, is theoretically correct but would create burdensome accounting requirements.

M. *HAMPTON WATER WORKS CO.*

Hampton Water Works Company (Hampton) paid the tax on contributions-in-aid-of-construction through October 15, 1987. It had discussions with thirteen developers on $927,000 of pipeline extensions. The developers have indicated that they would pursue alternate water supplies if Hampton requires the tax to be paid in addition to the construction costs. Hampton further stated that it would attempt to collect a deposit sufficient to cover the amount of the taxes and use an escrow agreement to permit a refund depending on the outcome of this case. Hampton has attempted to negotiate with developers to pay the tax on CIAC. If negotiations are not successful, the Company would pay the taxes. It proposes to continue that policy and defer taxes on any taxes that they pay. It claims that the prepaid deferred tax would result in a rate base addition, which they have included in their presently filed rate case, DR 87-255.

N. *Home Builders Association of New Hampshire*

The Home Builders Association of New Hampshire (HBA) filed a position paper on October 27, 1987 indicating a need for the commission to review the entire issue of CIAC. Specifically, HBA requests that, in light of the new tax laws, the utilities in New Hampshire be required to submit plans designed to eliminate CIAC. HBA contends that the revision in the tax laws diminishes the usefulness of CIAC for both the utility and its rate payers. Ultimately the only entity which benefits from CIAC, post TRA, is the IRS. Consequently, HBA believes it is no longer in the public good; therefore, HBA suggests that the commission should prohibit utilities from requiring CIAC as a prerequisite of securing access to service.

Alternatively, if the commission permits the use of CIAC, HBA proposes that the utilities should not collect the increase in tax through CIAC. The utilities should be allowed to collect such tax through rates. The tax should be included in the utilities cost of service and not extracted from the developers and ultimately their customers.

Finally, HBA suggests that the commission should order utilities to refund amounts received from contributors related to the increase in tax from CIAC, unless specifically allowed by the utility tariff.

O. *New Hampshire Public Utilities Commission Staff*

In a memo to the commission, made available to all parties, the staff of the New Hampshire Public Utilities Commission (staff) advocated a position that the tax should be paid by the utility and recovered through the normalization method of accounting. This is identical to the alternative position taken by HBA.

Staff believes that the normalization of taxes, required by the IRS for those utilities utilizing the Accelerated Cost Recovery System (ACRS), mandates this method. In effect, the method as presented by Staff, requires little or no change in accounting by the utility. There is, however, a need to change the commission Chart of Accounts to allow for this method. Staff asserts that the CIAC account for water and gas utilities will have to be revised to allow the amortization of the balance of the account. This would permit a match in amortization of CIAC and depreciation of the CIAC related plant addition, eliminating the effect the two expenses have on utilities' book income.

The utility will then deplete its balance in deferred tax (originally paid by the utility) over the *tax life* of the CIAC related plant addition. The deferred tax balance applicable to the increase in CIAC tax, paid by the utility would increase the utility's rate base allowing the utility to earn a return on the funds expended and not recovered through its cost of service.

Staff believes this is the correct way to handle the tax law change. It provides the same equity contemplated by the commission when it permitted the normalization of taxes for other interperiod tax allocations such as liberalized depreciation. The only difference is that in the instant case the utility will be required to pay the tax in advance where in all other cases the ratepayer has been required to pay the tax in advance. The utility will recover the tax on the same accelerated schedule as depreciation expense will be recovered for federal income tax purposes. The utility would recover its investment through its inclusion in rate base over the associated recovery period. According to staff there is no need to change accounting methods or increase CIAC due to changes in the tax law if its position is adopted.

III. *Finding of Facts*

On October 22, 1986 the President signed into law the Tax Reform Act of 1986 (TRA). This document substantially revised the Internal Revenue Code of 1954 (Code). The scope of the revision was so great that Congress decided to redesignate the Code as the Internal Revenue Code of 1986, even though the general structure of the Internal Revenue Code of 1954 was retained.

Among the numerous code revisions is section TRA Sec. 824, which repeals Sec. 118(b) of the 1954 Code. The 1954 Code Sec. 118(b) provided that the treatment of contributions-in-aid-of-construction — CIAC — received by a regulated public utility be considered a contribution to the capital of the utility. Section 824 of TRA changed the tax status of the CIAC from a non-taxable capital addition to taxable income.

Current NHPUC uniform classification of accounts (UCA) for electric utilities mandate the accounting of CIAC. The UCA states the CIAC is to be netted against the related plant addition.

In effect, the gross plant in a electric utility's

records are reduced by any non-refundable contribution, or a customer advance for construction, where advances by customers for construction are to be refunded in part or in whole (18 CFR, Part 101) (Account No. 252 — Customer Advances for Construction).

Interperiod tax allocation (deferred taxes) is described by UCA as:

> ... timing differences between the periods in which transactions affect taxable income and the periods in which they enter into the determination of pretax accounting income, the income tax effects of such transactions are to be recognized in the periods in which the differences between book accounting income and taxable income arise and in the periods in which the differences reverse using the deferred tax method (normalized method of accounting). (18 CFR, Part 101).

Where the utility uses the normalization method of accounting the UCA requires the practice on a consistent basis, unless the commission provides otherwise. UCA has four accounts to record deferred taxes (Acct. No's 190, 281, 282 and 283).

The Current Uniform Classification of Accounts for Water and Gas Utilities have two accounts used to record refundable and non-refundable contributions toward construction. Account No. 265 — contributions-in-aid-of-construction is a separate account used by water and gas utilities to record non-refundable contributions. The balance in this account is not amortized and used to decrease a utility plant-in-service in the context of a utility's rate filing. See *Re Hillsboro Water Co., Inc.*, 67 NH PUC 903 (1982). Customer advances for construction which are to be repaid in part or in whole are recorded in Account 242 — Miscellaneous Unadjusted Credits.

Neither gas nor water utilities' UCA have specific guidance for interperiod tax allocations. However, as stated above, the commission has accepted the normalization method of accounting for all utilities within its jurisdiction.

IV. *Commission Analysis*

Our review of the positions of the parties reveals that there are four issues within the scope of the instant docket which require commission response. Generally, these issues include:

A. The proper manner for the utilities to recover the increase in federal income tax directly applicable to the change in tax status of Contributions-in-Aid of Construction;

B. accounting for the decision on item A above;

C. the refund, if necessary, of additional tax previously added in CIAC by certain utilities (Exeter & Hampton Electric Co., Concord Electric Co., Granite State Electric Co., etc.); and

D. required tariff changes to implement any decision made herein.

The principle issue is item A. All parties to this docket have analyzed this issue, and most have made firm recommendations. Our options, based on the parties position papers and

decisions made by commissions in other jurisdictions, are as follows: 1) full up front recovery of the increase in tax from CIAC by the utilities; 2) prepayment by the utility of the increase in tax and recovery of said tax over the tax life of

the CIAC related plant addition; or 3) a modified version of the first option, net of the cumulative present value of the tax benefits applicable to the CIAC related plant additions.

The commission is aware of several additional variations that have not been addressed. One alternative would be to treat the CIAC as revenue and pass the net amount after taxes to ratepayers. Plant would be rate based and the revenue requirement charged to ratepayers over the life of the asset. The contributor would continue to pay the same construction costs as under the prior tax policy. The payment would be passed through to customers in the form of reduced rates. Another alternative would be to collect the taxes from the contributor and require the utility to refund the tax benefit of future depreciation in each year it occurs. Finally, to address the issue raised by Unitil regarding developers requiring underground facilities which may not be fully utilized, the commission could require that the developer set up an escrow account to guarantee full development.

[5] The first three options have been analyzed in depth by a majority of the parties. In particular, Granite provided an objective analysis of all three options. Based on the analysis of these options and the findings of facts previously discussed, we find that option two (2) is the most appropriate method to account for CIAC. This option is most appropriate because it is a) in the public good; b) is the easiest to administer; and c) complies with both the Internal Revenue Code and past commission precedent.

This decision provides the cleanest way to handle CIAC transactions. Under option two (2) the utility pays the tax if there is a tax liability during a given tax year and records it as a prepaid deferred tax, increasing its rate base. Ratepayers will pay a return on the accumulated prepaid tax *over the tax life of the associated property*. If the utility were to charge the tax up-front as part of the CIAC (option one (1) and three (3)) then the CIAC which is applicable to the increase in tax (a tax on a tax), would multiply the burden to the contributor. Therefore, we believe option 2 allows all parties to share the burden created by the new tax law.

[6] The commission does not believe that it is appropriate to ask a contributor to pay the tax on the contribution-in-aid-of-construction. If the tax were required, an additional tax upon the tax would be assessed thereby increasing the cost to society as a whole with no apparent benefit to anyone except for increased tax flow.

We also find it inappropriate to apply the net present value methodology to the future tax benefits. The utility will be required to invest funds to pay the taxes. A return will be earned on that investment which will compensate the utility over time no matter what the present value of investment is at any future time. New Hampshire has traditionally been an embedded original cost state for ratemaking purposes and we will apply the same principles to the deferred taxes on contributions-in-aid-of-construction. Further, the present value methodology requires the use of a discount rate. The utilities have used their cost of capital as the discount rate. As capital costs increase and decrease over time the discount rate will change. Utilities have applied a constant

tax rate over the tax life of the asset. The federal income tax rate will almost surely change over time. Finally, the effective tax rate for each utility can be different. For instance, PSNH has tax loss carryovers which could effectively exclude the payment of income taxes for years. Any

tax payments by contributors would not be used to pay taxes as there would be no tax liability. Any gross up of a tax upon a tax would provide additional cash which would not be used to pay taxes. Therefore, we will not adopt the present value methods used by the utilities.

Option two (2) eliminates a need for a response to issues B and D above. This option does not create a need to change the method of accounting by most utilities within this state. Utilities will continue to utilize the normalization method of accounting. The prepaid tax on CIAC will accrue as a deferred asset and be amortized over the tax life of CIAC related plant addition. For gas and water utilities the CIAC related plant additions will be recorded on the books at full book cost and remain undepreciated. The CIAC will also be recorded at full cost and remain unamortized. Electric utilities will capitalize the cost of plant additions net of the CIAC.

Further, refundable advances for construction will continue to be booked as usual. Refunds will reduce the advance and deferred tax balance proportionately. A refund will reduce the utilities tax liability in any given year.

[7] One concern raised by a majority of the utilities is the negative effect prepayment of the CIAC related tax has on a public utility's cash flow. In most part a utility is compensated for this effect by ratepayers through the return on rate base when option one (1) is used. In none of the cases presented has there been any indication of a significant cash flow impact. All of the major utilities, excepting PSNH, have adequate sources of funds. (PSNH does not need to raise funds for taxes). In the case of a small water utility that has problems raising funds, we will consider a policy of allowing taxes on CIAC to be collected. However, as the tax benefits are realized, refunds will be made to the contributor. Each small water utility will be required to file a petition on a case by case basis.

[8] The final issue relates to refunding the CIAC related tax, paid by customers in the past. Certain utilities have inappropriately charged contributors for the tax on CIAC. Present tariffs allow all costs of construction to be included in the calculation of the contribution in aid of construction. The costs includable are costs which are capitalizable as plant costs. Income taxes were never contemplated to be part of the provisions of the tariff. It is apparent, therefore, that refunds must be made. There will be no interest accrued on these refunds because the CIAC collected had artificially reduced the cost of service which otherwise would have been paid by the consumers of said utility. In other words, if a utility had accounted for the increase in tax from CIAC as prescribed herein, rates would have been proportionately higher to account for the return on increased rate base.

The commission is aware that certain utilities have been requiring tax payments for highway relocations and for connections with small power producers who fall under the Public Utilities Regulatory Policy Act of 1978 ("PURPA"). This policy would be incorrect regardless of the methodology that is approved in this case. These contributions are not includable in gross income for tax purposes.

[9] There are several examples of utility policy related to contributions-in-aid-of-construction that are clearly incorrect in the application of taxes on contributions. The legislative history of the Tax Reform Act of 1986 "provides that the repeal of section 118(b) of the 1954 Code does not affect transfers of property which are not

made in connection with the provision of services, including situations where it is clearly shown that the benefit of the public as a whole was the primary motivating factor in the transfers."[1(15)] The federal income tax treatment of many types of relocation fees has not been affected by section 824 of the Act. If it can be shown that a particular payment received by a utility does not reasonably relate to the provisions of services by such utility to or for the benefit of the person making the payment, but rather relates to the benefit of the public at large, then the payment is not treated as a CIAC under 118(b) of the 1986 Code. The same principle would hold true in the case where a utility is being reimbursed for the costs of relocating utility lines to accommodate the construction or expansion of a highway and not for the provision of utility services. Customer connection fees are not considered CIAC's because such fees are currently included in gross income by utilities under both the 1986 and 1984 Codes. Payments made from utilities to their customers are not considered CIAC's. Therefore, as small power producers and co-generators are considered utilities and other utilities purchase their power, their fees paid for interconnection are not taxable to the customer providing the interconnection facilities.

Many of the positions taken by the parties in this case are based upon the argument that the cost causers should be responsible for the taxes on contributions. We have previously mentioned the intent of the Act to exclude from CIAC taxability those benefits which relate to the public as a whole. The commission would consider payments made by cities, towns, and the Governor's Energy Office to replace street lighting with energy efficient equipment to be for the benefit of the public as a whole. In fact, the general body of ratepayers should be benefitted by the energy savings and the reduction in the need for generating capacity.

Nowhere in the testimony is there any mention of the fact that underground facilities will require less maintenance than overhead facilities which are subject to weather conditions and traffic accidents. The commission is also aware that some utilities are asking for taxes to be added to contributions for highway relocations and street lighting changes. We would consider those items to be for the benefit of the general public and can see no reason why the cost should not be borne by the general body of ratepayers.

V. *Conclusion*

Based on the foregoing analysis we find that utilities within the jurisdiction of this commission cannot charge customers for the increase in tax on CIAC due to the change in tax law (TRA). Utilities that utilize the normalization method of accounting will recover this cost over the tax life of the CIAC related plant addition. The unrecovered balance will earn a return by increasing the utility's rate base, compensating said utility for the prepayment of the incremental tax expense.

Further, amounts collected by utilities for the incremental tax expense applicable to CIAC

prior to the instant decision will be refunded.

Our Order will issue accordingly.

ORDER

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

ORDERED, that all New Hampshire Utilities shall continue to treat

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contributions-in-aid-of-construction in the same manner that they were treated prior to the passage of the Tax Reform Act of 1986; and it is

FURTHER ORDERED, that New Hampshire utilities shall not impose the federal or state tax on contributions-in-aid-of-construction; and it is

FURTHER ORDERED, that all utilities who have collected a tax on contributions-in-aid-of-construction since January 1, 1987 shall make refunds to the Contributor; and it is

FURTHER ORDERED, that each utility who has imposed a tax on contributions shall file a report with the Commission within ninety (90) days detailing the taxes received and the disposition thereof.

By order of the Public Utilities Commission of New Hampshire this eighth day of April, 1988.

FOOTNOTES

[1]Internal Revenue Service Advance Notice 87-82, *On Public Utility Taxes*, Released December 3, 1987.

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NH.PUC*04/11/88*[51969]*73 NH PUC 152*Granite State Telephone, Inc.

[Go to End of 51969]

73 NH PUC 152

Re Granite State Telephone, Inc.

DR 86-297
Order No. 19,057

New Hampshire Public Utilities Commission

April 11, 1988

ORDER accepting a settlement agreement establishing rates for a local exchange telephone carrier.

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1. EXPENSES, § 114 — Treatment of particular expenses — Taxes — Interest synchronization.

[N.H.] When determining tax expenses, interest synchronization is a calculation that breaks down the investment for credit into the same ratios as the debt and equity ratios in the capital structure and implies an interest expense for the debt portion; a tax calculation is performed using this imputed interest deduction to give the ratepayers the benefit of that portion of the investment tax credit. p. 155.

2. TAXES, § 1 — Generally — Deferred income taxes — Definition.

[N.H.] Deferred income taxes arise where a utility has, over a period of years for cost of service purposes, booked higher taxes than it has actually paid. p. 155.

3. RATES, § 532 — Telephone rate design — Objectives — Settlement agreement.

[N.H.] The parties to a settlement agreement for a local exchange telephone carrier's rate case proceeding developed several rate modifications based upon the following objectives for the development of rate designs: (1) the need to set nonrecurring and non-basic charges at levels that would keep the basic local rates as low as possible; (2) the need to adequately apportion the impact of higher rates between types of services; (3) the need to provide an alternative lower cost service to assist the low use or low income residential customer; (4) the need to set rates for vertical services at levels that provide optimum penetration and revenue contribution; and (5) the need to explore any new service offerings that will serve as additional revenue sources. p. 157.

4. RATES, § 553 — Telephone — Touch-tone service — Basic service.

[N.H.] The proposed inclusion of the costs of touch-tone service within the basic rate of a local exchange telephone carrier was denied as premature; however, a generic docket will be opened to establish a framework within which

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the commission will be able to determine if and when the costs of touch-tone should be included in the basic rate. p. 159.

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i. RATES, § 532 — Telephone rate case — Settlement agreement — Provisions.

[N.H.] Discussion summarizing all aspects of a local exchange telephone carrier's rate case proceeding settlement agreement, including revenue requirement, rate base, return on equity, and authorized rate increase. p. 156.

ii. RATES, § 553 — Telephone — Touch-tone service — Basic service — Electronic central office equipment.

[N.H.] Statement, in separate opinion, that touch-tone service should be included in a local exchange telephone carrier's basic rates in order to set a higher standard of telephone service than has previously been offered at basic rate levels, especially because of the electronic central

office equipment installed by the carrier which brings telephone users the latest state of the art opportunities in telephone service. p. 160.

APPEARANCES: As previously noted.

By the COMMISSION:

REPORT

This report pertains to the petition of Granite State Telephone, Inc. for permanent rates. The report sets forth the procedural history of the case. It presents a summary of the original positions of the parties, the settlement agreements entered into by the parties, and the commission's analysis. This report and order approves the rates embodied in these agreements.

I. *Procedural History*

Granite State Telephone, Inc. (Granite State or company) filed revised tariff pages on March 16, 1987, for effect April 16, 1987, along with supporting testimony and exhibits, which incorporated a proposed rate increase of $667,000. On April 3, 1987, Granite State filed revised tariff pages in substitution for the originally filed petition. These tariffs reflected certain proforma adjustments that reduced the originally requested rate increase to $600,032. By order no. 18,634, dated April 10, 1987, the commission suspended the proposed rates from taking effect pending investigation.

On June 15, 1987, the staff of the commission filed a motion to dismiss the petition along with a memorandum of law and supporting testimony. On July 2, 1987, Granite State filed an objection to the motion to dismiss. The commission issued an order of notice on July 27, 1987, scheduling a hearing on the motion and the objection on August 26, 1987.

At the August 26th hearing on the motion to dismiss the staff and the company submitted an oral stipulation whereby the company agreed to calculate its revenue requirement based on a 1986 test year. The stipulation also provided that the company would provide the data supporting the rate request on a combined as well as on a separated intra-state basis. The parties agreed to make the company's existing rates temporary. The staff agreed to a continuance of its motion to dismiss. The parties also agreed to a procedural schedule that included a September 18, 1987, hearing on the temporary rates. On August 28, 1987, Granite State filed a written request for a temporary rate increase of $175,877 (31.1 percent) pending a determination by the commission on the

permanent rates.

The commission approved the stipulation by report and order no. 18,806 (September 1, 1987) (72 NH PUC 378) with the exception of the temporary rate request. The commission found that the temporary rates had not been adequately noticed. By this report and order the commission ordered the company to submit temporary tariffs on August 28, 1987, for effect on September 25, 1987, and deferred the request for temporary rates pending public notice and hearing. On September 1, 1987, the commission issued an order of notice scheduling a hearing on the merits

of the temporary rate request and a prehearing conference on the permanent rate request for September 21, 1987.

The approved temporary rates were designed to produce a revenue increase of $172,917. The increase was to be partially derived from a $39,906 increase in charges for nonrecurring items. The balance of the revenue increase would come from a 26.75 percent across the board increase in local service rates, rounded to the nearest $.05.

The commission approved the temporary rates in report and order no. 18,855 issued September 25, 1987 (72 NH PUC 463), for effect on September 25, 1987. By this order the commission also required the company to propose a lower cost offering such as low use measured service, or multiple party service or provide an explanation of why this type of offering is unnecessary at this time.

On December 30, 1987, the staff filed a settlement agreement entered into by the company and the staff intended to resolve all of the issues involved in the case with the exception of the rate design issue. The commission held a hearing on January 6, 1988 at which the settlement agreement was presented. The parties requested that the commission defer a decision on the entire petition so the parties might discuss a settlement on the rate design issue. They proposed a February hearing on rate design.

On February 2, 1988, the staff filed a stipulation between the staff and the company intended to dispose of the rate design issue. The parties presented the stipulation at a hearing on February 4, 1988.

At the February 4, 1988, hearing, the commission requested that Granite State file a rate design alternative by which touch-tone service would be incorporated into basic local service. The commission requested that the design be revenue neutral.

II. *Positions of the Parties*

The following section summarizes the positions of the parties as originally filed, before the settlement agreements were negotiated. It is divided into subsections to discuss the revenue requirement and rate design issues.

A. Revenue Requirement

For the purpose of calculating the revenue requirement the company originally proposed to utilize intra-state costs and revenues. The staff argued that the revenue requirement should be calculated on a total company basis, in other words, considering both intra-state and interstate costs and revenues.

Granite State had originally requested a return on equity of 13.5 percent. The staff had advocated a 10.77 percent return on equity.

For the purpose of determining the revenue contribution from intra-state toll settlements, the company took the position that an average 1986 rate base should be utilized. The staff contended that a June

1987 rate base should be employed due to the fact that the settlement's calculation will

actually be based on a June 1987 rate base.

The parties differed on several expense issues. The company recommended the use of its new depreciation study for computation of depreciation expense. The staff recommended the use of the depreciation study except for the depreciation rates for buildings and central office equipment. The study depreciated buildings at a rate of 3.68 percent and the digital switch in the Weare central office at 10.67 percent. The staff urged the use of 3 and 9.62 percent for the buildings and the Weare switch, respectively.

Granite State proposed to remove from expenses the “out of pocket” expenses related to the provision of inside wire and customer premises service except for labor related to portions of people's time formerly spent on the regulated provision of inside wire and customer premises equipment services.[1(16)] The company alleges that this labor will now be used to work on outside plant and central office equipment. The staff originally contended that this $26,000 should be removed from expenses.

The company petitioned for $32,000 for rate case expense. The staff recommended inclusion of $15,000 for rate case expense.

[1] There were two major issues regarding the calculation of tax expenses. The staff maintained that interest synchronization should be utilized. Granite State had not employed interest synchronization in its applications. The staff averred that interest synchronization would allow some of the benefits of investment tax credits to be passed on to the ratepayers. Interest synchronization is a calculation that breaks down the investment for credit into the same ratios as the debt and equity ratios in the capital structure and implies an interest expense for the debt portion. A tax calculation is performed using this imputed interest deduction to give the ratepayers the benefit of that portion of the investment tax credit.

[2] The second tax issue pertains to Account 176 or deferred income taxes involved with accelerated depreciation. The staff asserted that the amount of excess deferred income taxes should be reflected in the filing. Deferred income taxes arise where a company has, over a period of years for cost of service purposes, booked higher taxes than it has actually paid. During the 1970's, according to the staff, most companies booked taxes at 48 and 46 percent. The staff argues that, now that the tax rate has been lowered to 34 percent, the difference between past and the effective tax rates should be flowed back to the rate payer. The excess deferred tax is divided by the average remaining life of the company's average plant and is paid back to the ratepayers on a straight line basis. This method was used instead of the “average rate assumption method” because a detailed asset vintage study had not been performed.

Initially, the company requested a net to gross multiplier of 1.6487. This net to gross multiplier is a ratio used to give effect to income taxes and uncollectibles. The staff argued for a net to gross multiplier that did not give effect to uncollectibles.

Granite State's petition contained rates calculated using a rate base arrived at by taking an average of the beginning of year and the end of the year rate base. The staff proposed a thirteen month average year rate base.

B. Rate Design

The company proposed the following increases in service rates to meet the revenue deficiency. Service order connection charges would be increased to more closely compensate for the cost of service. The residual revenue requirement would be divided *pro rata* across the majority of basic rates. Custom calling and directory related charges would not be increased because the company feared this would have a negative effect on subscription and concomitantly on revenues.

The staff made several contentions concerning the proposed rate design. The staff argued that custom calling and directory listing rates should be increased, and that touch-tone rates should be kept at current levels. It also argued that the initial service order charges should be increased to $20.00 while subsequent and record service order charges should be reduced by one-third or phased into the proposed Granite State rates, and that the central office line connection charge should be reduced to a range of $15.00 to $20.00.

III. *Findings of Fact*

[i] The company and the staff have entered into two settlement agreements the purposes of which are to dispose of all aspects of the case. The first subsection summarizes the revenue requirement agreement and the second subjection outlines the terms of the rate design stipulation. The third subsection describes the various rate design alternatives submitted by Granite State that include touch-tone service as part of the basic telephone service.

A. Revenue Requirement

The settlement agreement provides for a rate increase of $296,990. The test year used to calculate the revenue requirement is the calendar year 1986 adjusted for normalizing items and known and measurable changes. The rate base is a thirteen month average rate base as calculated by the staff adjusted for known and measurable changes. A June 1987 rate base level was utilized to calculate the revenue contribution from intrastate toll settlements.

The revenue requirement is computed using total intra-state and interstate costs and revenues. The agreed return on equity is 11.48 percent, and the return on debt is 5.66 percent.

The capital structure existing as of September 30, 1987, was used to calculate the overall return on rate base of 6.50%:

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

	Weight	*Cost*	*Weighted Cost*
Common equity	14.38%	11.48%	4.84%
Preferred equity	.12	5.00	0.01
Long term debt	85.49	5.66	1.65
	100.00%		6.50%

The parties agreed to the following expenses. Concerning depreciation, the settlement contained a 3 percent and 9.62 percent rate of depreciation on buildings and the Weare digital switch respectively. The $26,000 originally related to inside wire labor will remain in the expenses. A rate case expense of $21,000 was agreed upon. Interest synchronization was used. The company agreed to reflect in its tax rate calculation the amount of excess deferred income

taxes. The parties agreed to a 1.6487 net to gross multiplier.

Based on the agreement summarized

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above the stipulated revenue increase was computed as follows:

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

Rate Base	$6,970,338
Cost of Capital	6.50%
Revenue Requirement	452,821
Less: Net Operating Income	272,686
Revenue Deficiency	180,136
Net-to-Gross multiplier	1.6487
Required Rate Increase	$296,990

The parties also agreed that the recoupment recoverable under RSA 378:29 will be recovered ratably over each class of basic service for the difference between the temporary and the permanent rates over a twelve month period. The company agreed to show the recoupment on each customer's bill as a separate item.

B. Rate Design

[3] The parties agreed to several objectives for the development of rate designs. These objectives were: the need to set nonrecurring and non-basic charges at levels which would keep the basic local rates as low as possible, the need to adequately apportion the impact of higher rates between types of services, the need to provide an alternative lower cost service to assist the low use and/or low income residential customer, the need to set rates for vertical services at levels that provide optimum penetration and revenue contribution to basic local rates, and the need to explore any new service offerings that will serve as additional revenue sources.

Based on the objectives the parties developed several agreed upon modifications to the originally requested rates. These modifications were

1. Introduction of residential low use measured service for the Weare and Chester residence customers. This service has a $5.00 monthly charge which includes an allowance of 30 message units (one Message Unit equals five minutes). Message units in excess of this allowance would be rated at 16.5 cents for each message unit. The Hillsborough Upper Village and Washington Exchanges are presently scheduled for conversion to digital technology by December 31, 1988. Upon completion of the conversions, this service will be made available to those customers.

2. Custom calling rates have been reduced by 25% for both residence and business service with a 30% stimulation factor assumed as a result of the lower rate. Granite State has developed a marketing plan intended to produce the expected results. The marketing plan is further described in the settlement;

3. Rates for touch-tone service for residence service were increased by $0.15 to a total of $0.95 while business service remained at the current $1.50 rate.

4. The initial service order charge was set at $20.00 as proposed by staff. Subsequent and

record service order charges remained as originally proposed by Granite State at $10.00 and $6.00 respectively. The central office line connection charge was reduced from $30.00 as originally proposed by Granite State to a $20.00 level as recommended by Staff. The restoral of service charge was reduced from the proposed rate $24.50 to $15.00. Granite State will develop an optional time payment plan for initial service connection charges which will allow up to four months for payment.

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5. Additional listing, non-directory listing and non published listing rates were considered relatively demand inelastic services and were increased by $0.75, $0.75 and $1.00 respectively.

6. Granite State will develop a new tariff offering for trunk lines associated with private branch exchange service. The rate for this service will be 150 percent of the one party unlimited business service rate for the particular exchange involved.

7. The residence and business basic flat rate for the Weare and Chester Exchanges have been equalized resulting in rates of $11.50 and $8.05 for one and two party residence and $18.05 and $12.75 for one and two party business. The number of customers that can be reached toll free are approximately equal for each of these exchanges. Weare has EAS to Manchester, Goffstown and New Boston resulting in a local calling area of approximately 65,000 access lines. Chester has EAS to Derry and Manchester resulting in a local calling area of approximately 80,000 access lines. If compared to New England Telephone's rate structure, Chester would be in rate group 18 (i.e. one party residence flat rate of $14.48) while Weare would be in rate group 17 (i.e. one party residence flat rate of $14.14).

C. Touch Tone

At the request of the commission at the February 4th hearing, the company submitted four alternative plans to include touch-tone service as part of the rate charged for basic local service.

At present, 62% of the Company's subscribers in the Weare exchange elect touch-tone service; 29% of the Washington subscribers do so. The record indicates that touch-tone and customer calling features are available to Granite State subscribers in the Weare and Chester exchanges. In the Hillsboro and Washington exchanges, touch tone is offered but custom calling features are not available. Currently, business one-party subscribers pay a price-based separate charge of $1.50 for touch-tone while residential one-party subscribers pay a separate charge of $.80 for touch-tone.

Plans one and two are similar in their assumptions. The plans first increase basic local service rates by the full amount of separate touch-tone charges approved in this proceeding. Rates of customers not presently subscribing to touch-tone increase by an average amount of $ .95 for residential and $1.50 for business customers. The basic rates are then proportionately adjusted, based on the ratio of the current price for each basic service to the total revenue deficiency. Since previously only 56% of Granite State's customers were on touch-tone, including the full amount of the proposed touch-tone charges in basic rates for all customers resulted in an over-recovery. The company proposed decreases in rates of other special services

such as Red Net, semi-public coin, channel, and additional channel in order to keep the change revenue neutral.

The plans vary in that plan one increases basic monthly rates for residential low use measured service customers by $.95 (the same as for all other customers) while plan two provides touch-tone without increasing the residential low use measured service rate.

Plans three and four propose an increase in basic local service rates to reflect only the amount of the revenue deficiency that

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would result from the loss of the separate touch-tone revenues rather than the amount of the touch-tone charge. The rate increase was calculated by dividing the revenue deficiency by the total number of residential and business local exchange lines. As in the first two plans, the company proportionately adjusted this amount based on the current price for each basic service in relation to the total revenue deficiency.

Again, the two plans vary in that plan three assigns a proportional part of the touch-tone revenue deficiency to low use measured service subscribers while plan four does not. Residential low use measured service rate would increase by $.45 per month under plan three.

IV. *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. It should be noted that this is the company's first rate case since 1978.

The rate design is just and reasonable. Therefore, we approve the rate design agreement for resolution of this particular petition.

The commission determines that the allowed return on equity of 11.48% provides reasonable compensation to equity investors given the modest business and financial rise of the company, and should offer the company an added incentive to increase the amount of common equity in its capital structure.

The approved increase will be effective as of the date of this order. The company shall file on April 29, 1988, a proposed calculation of recoupment (in accordance with the terms of the December 30th agreement) for the loss of revenue during the period temporary rates were in effect in sufficient detail to allow for appropriate analysis. Pursuant to the commission's report and order no. 18,855, those surcharges may be applied to reflect the under recovery for the period of September 25, 1987, through the effective date of the permanent increase. Those surcharges shall be recovered over a twelve month period. The company shall designate the recoupment charge as a separate item on each customers bill. On the first day of the eleventh month of the recoupment period the company shall file a calculation indicating the amount recouped to date.

[4] We have carefully considered the policy change of recognizing touch-tone as the basic telephone service and including the associated cost and revenue deficiency in the basic rate. We have reviewed the four alternative plans submitted by the company, but have concluded that

such action would be premature given the number of factors that need to be analyzed and criteria that need to be satisfied.

We will, therefore, shortly open a generic docket to establish a framework within which we will be able to determine when the basic service offering for each company under our jurisdiction should include touch-tone, in the service and in the basic rate. That analytical framework will include, but not be limited to, technical criteria such as the system's switching capability, the incremental cost of providing touch-tone (both hardware and software) and the coincidence of equipment required to provide touch-tone and custom calling features. It will address the nature of the market, including the penetration rates for touch-tone and custom calling features for new and existing customers, and the elasticities of demand for touch-tone and custom calling features with

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respect to price, customer demographics, company marketing programs and customers' perceived value or need of a particular service.

Finally we will consider the effect of various forms of rate design that absorb the cost and/or the "contribution" of touch-tone into the basic rate and/or the custom calling feature rates. In this way, we will develop a policy that will allow rate design to evolve to reflect changing technology while at the same time we continue to monitor the cumulative effect of various additional charges on the basic rate.

Our order will issue accordingly.

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 Granite State Telephone Company, Inc. concerning revenue requirement is approved; and it is

FURTHER ORDERED, that the proposed stipulation between the staff and Granite State Telephone Company, Inc. on rate design is hereby approved; and it is

FURTHER ORDERED, that the company file the following:

a.) revised tariff pages reflecting the increase effective the date of this order and bearing the following notation "Authorized by NHPUC Order No. 19,057 in Docket No. DR 86-297, dated April 11, 1988; and

b.) a detailed calculation (on April 29, 1988) of the amounts under collected by the company comparing the permanent increase to the temporary rate increase granted by the commission in report and order no. 18,806 issued on September 1, 1987 (72 NH PUC 378).

By order of the Public Utilities Commission of New Hampshire this eleventh day of April, 1988.

SEPARATE OPINION OF COMMISSIONER BRUCE B. ELLSWORTH

[ii] I concur with my fellow Commissioners with regard to the preceding report with one

exception. I would find that touch tone service should be included in basic rates.

This docket gives us a unique opportunity to set a higher standard of telephone service than we have heretofore offered at basic rate levels. The electronic central office equipment which Granite has systematically installed throughout its service territory brings to its telephone users the latest state of the art opportunities in telephone service. Customers not only have access to voice communications but to data information services, 911 services, home care alarm services and many other services which, in this electronic age, attempt to make our lives more orderly and efficient. Of even more significance to many local customers, however, it provides an opportunity for push-button touch tone telephones and their accompanying customer calling features.

When electronic equipment was first installed, there was only limited response to the new touch tone features. Accordingly, rate designs were established which set the electronic features apart as premium features, and premium rates were set for their specific uses. The corresponding revenues which were generated from those premium services helped to off-set the basic rates for “plain old telephone

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service” for all other customers.

What were once premium services, however, have now become a standard. Over 60% of the customers in the Weare exchange now have touch tone service. Almost 85% of new customers request touch tone service. Clearly, today's customers are expressing higher expectations in service capabilities. I believe the time has come to eliminate the subsidy price levels of touch tone service and to establish a new basic level that will allow *all* customers the opportunities afforded by the equipment that has been installed.

The majority maintains a separation between touch tone service and basic service in an attempt to keep basic rates to all customers as low as possible, a philosophy I certainly endorse. However, customers will perceive this rate increase to be substantial regardless of whether or not touch tone is included. While the evidence in this docket has convinced us that the rate levels we have set are essential, the fact remains that Granite's customers will see no added service benefits in their basic service above those which were available before the rate case was proposed. The addition of touch tone rates would add approximately fifty cents per month to all customers' basic bills, but customers would receive a higher level of service with greater opportunities to utilize electronic services without having to pay extra for those services. Electronic telephone service has come of age. It is time for all customers — unlimited user service customers and low use measured service customer alike — to be able to consider electronic services as a part of their basic telephone service.

FOOTNOTES

[1]Inside wire and customer premises equipment services have been deregulated by the Federal Communications Commission.

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73 NH PUC 161

Re New England Hydro-Transmission Corporation

Additional parties: New England Power Company, Public Service Company of New Hampshire and UNITIL Power Corporation

DE 87-124
Order No. 19,058

New Hampshire Public Utilities Commission

April 11, 1988

ORDER approving cash deficiency guarantees, stock issuance, and lease agreements relating to the Hydro-Quebec Phase II project.

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1. ELECTRICITY, § 3 — Interconnected systems — Financing — Cash deficiency guarantees — Commission approval.

[N.H.] The commission approved cash deficiency guarantees for the Phase II New Hampshire Transmission Facilities Support Agreement, the Phase II Massachusetts Transmission Facilities Support Agreement, and the agreement with respect to an amendment of the agreement with respect to the Use of the Quebec Interconnection, which require all participants automatically to increase their payments to the debt lenders or to Hydro-Quebec should any participants fail to pay their share of the project's capital or energy costs; the financial uncertainties surrounding several of the project participants required the additional support if the project was to be assured of an investor-grade rating despite the involvement of less than investor-grade participants. p. 163.

2. SECURITY ISSUES, § 58 — Purposes and subjects of capitalization — Equity — Project financing — Hydro-Quebec Phase II.

[N.H.] The issuance from time to time by New England Hydro-Transmission Corporation of up to 89,999 additional voting or nonvoting shares of common stock, was approved, in order to provide the equity portion of that company's capital structure, which is expected to equal 40% of the financing cost for the Hydro-Quebec Phase II project. p. 164.

3. ELECTRICITY, § 3 — Interconnected systems — Transmission right of way — Leases — Hydro-Quebec Phase II project — Cost of service.

[N.H.] The commission approved a lease by New England Power Company (NEP) to New

England Hydro-Transmission Corporation of 112 miles of NEP's transmission right of way and another lease by Public Service Company of New Hampshire (PSNH) to New Hampshire Hydro-Transmission Corporation of a nine-mile portion of PSNH's transmission right of way; the leases were necessary as part of the Hydro-Quebec Phase II project and were approved because the terms were based on cost of service for the properties, were part of the settlement agreement among the parties, and had been accepted by the Federal Energy Regulatory Commission as a rate schedule. p. 164.

APPEARANCES: Orr & Reno by Kirk L. Ramsauer, Esq. David Marshall, Esq. and Richard B. Couser, Esq. for New England Power Company and New England Hydro-Transmission Corporation, Paul K. Connally, Jr., Esq. and LeBoeuf, Lamb, Lieby & McRae by Elias G. Farrah, Esq. for UNITIL Power Corporation, Thomas B. Getz, Esq. for Public Service Company of New Hampshire and Martin C. Rothfelder, Esq. for the Commission and the Commission Staff.

By the COMMISSION:

REPORT

PROCEDURAL HISTORY

On June 25, 1987 a joint petition regarding the Hydro-Quebec Phase II project was filed on behalf of New England Hydro-Transmission Corporation (NH Hydro), New England Power Company, Public Service Company of New Hampshire and UNITIL Power Corporation (the applicants). The petition requested approval by the Public Utilities Commission of the following:

A. Under RSA 369, certain commitments relative to cash deficiencies and deficiencies in payments under the Phase II New Hampshire Transmission Facilities Support Agreement, the Phase II Massachusetts Transmission Support Agreement and the Agreement with respect to Amendment of Agreement with respect to Use of Quebec Interconnection.

B. Under RSA 369, issuance by New England Hydro-Transmission Corporation from time to time, of up to 89,999 additional shares of Common Stock.

C. Under RSA 374:30, the lease of 112 miles of right-of-way and AC Transmission Facilities owned by New England Power Company and the related Fifteen Mile Falls Support Agreement.

D. Under RSA 374:30 the lease of 9 miles of right-of-way owned by Public Service Company of New Hampshire.

The commission issued an Order of Notice on August 18, 1987 setting a

prehearing conference for September 8, 1987. On September 3, 1987 the Office of the Consumer Advocate (OCA) filed a notice of intervention; the OCA subsequently issued data requests but did not participate in the hearings. Following the prehearing conference the

commission by report and order no. 18,833 (72 NH PUC 428) established a procedural schedule that ended with a hearing on November 5, 1987. The hearing date was continued at the request of the commission staff.

On December 9, 1987 the commission staff filed a motion to dismiss or to require additional prefiled testimony, asserting that the direct case filed by the applicants was not sufficient to meet their burden of proof. On December 14, 1987, the applicants responded and, without admitting to the allegations in the staff motion, offered to provide additional testimony that would address the concerns raised by staff in the motion. By supplemental order no. 18,951, the commission denied without prejudice the staff's motion pending receipt of the applicants' additional prefiled testimony and adopted a procedural schedule that concluded with hearings held the last week of January or the first week in February. Hearings were held on February 3, 5 and 8, 1988.

COMMISSION ANALYSIS

In the prefiled documents and testimony of the company, voluminous material was filed relative to contractual commitments that are not part of this case, as well as information regarding the costs and benefits of the project, its reliability and stability, and other factors. These latter issues were specifically addressed in deliberations of the Bulk/Power Supply Site Evaluation Committee and in docket DSF 85-155 which resulted in conditional report and order no. 18,499 (71 NH PUC 727). While this material provided background for our review of the four specific requests, we do not here address any contractual commitments other than those requested in the instant petition. Specifically we do not address the reliability, stability and other factors left open in DSF 85-155 and will, in fact, address those issues at a later date upon submission of appropriate testimony and exhibits.

In regard to those larger issues, we will take this opportunity to express our concern over the limited availability of Canadian power that was demonstrated during the 1987-88 winter season and the resulting level of sensitivity between the energy representatives of both countries. These expressed sensitivities temper the aura of optimism that has prevailed since the signing of the Hydro-Quebec agreements. While disagreements over minor issues may be an expected, and even healthy, relationship, it seems to us that it is essential that the underlying precepts of a negotiated agreement must be soundly based on confidence and support. We look forward to a complete and open airing of the issues in subsequent hearings.

The petition before us requests commission approval of four commitments that relate to the Hydro-Quebec Phase II project. Two of the commitments involve aspects of the financing of the project and two relate to the leases to the New England Hydro-Transmission Corporation of the transmission right-of-ways in New Hampshire.

[1] The first commitment addresses the cash deficiency guarantees in the Phase II New Hampshire Transmission Facilities Support Agreement, the Phase II Massachusetts Transmission Facilities Support Agreement, and the Agreement with

respect to an Amendment of the Agreement with respect to the Use of the Quebec Interconnection. These three guarantees require all participants automatically to increase their payments to the debt lenders for the New Hampshire and Massachusetts portions of the project

or to Hydro-Quebec should any participant fail to pay its share of the project's capital or energy costs. The applicants argue that these cash deficiency guarantees in the Support Agreements are necessary to ensure that the project is able to borrow debt at a reasonable interest rate, given the involvement of Phase II participants who are rated below investment grade. The applicants state they are also necessary to prevent a technical default under the firm energy contract with Hydro-Quebec should one or more participants be temporarily unable to pay its share of the energy purchase.

The commission agrees that the financial uncertainties surrounding several of the project participants renders the additional support necessary if the project is to be assured of an investor grade rating despite the involvement of less than investor grade participants. While we believe that a technical default under the Hydro-Quebec agreement is an unlikely event, we acknowledge that the cash deficiency commitment isolates Hydro-Quebec from a risk it was never intended to assume. We also note that the cash deficiency commitments were part of the settlement agreement among the parties, and have been accepted by the Federal Energy Regulatory Commission (FERC) as a rate schedule.

[2] The second commitment involves the issuance from time to time by New England Hydro-Transmission Corporation of up to 89,999 additional voting or nonvoting shares of common stock, par value $5 per share, at a price of $1,000 per share as fixed by New Hampshire Hydro's Board of Directors. These shares will be in addition to the one share already issued by New Hampshire Hydro to NEES at a price of $1,000. This equity financing will provide the equity portion of New Hampshire Hydro's capital structure, which is expected to equal 40% of the project's financing.

Approval of both the cash deficiency commitments and the issuance of equity are required in order for the final support agreements to become effective and the construction financing to be finalized. Once the project moves into the construction financing phase, the project will be able to reimburse participants who contributed under the preliminary Support Agreement.

Upon investigation and consideration of the evidence submitted, the commission finds that granting approval of the cash deficiency commitments and authorization and approval of the equity financing will be consistent with the public good.

[3] The third commitment is a lease by New England Power Company (NEP) to New England Hydro-Transmission Corporation of 112 miles of NEP's transmission right-of-way in New Hampshire. Since this leased right-of-way includes existing AC transmission facilities of NEP, the Fifteen Mile Falls Support Agreement provides for New Hampshire Hydro to operate and maintain these AC facilities and for NEP to continue its support of these facilities. The fourth commitment is a lease by Public Service Company of New Hampshire (PSNH) to New Hampshire Hydro-Transmission Corporation of a 9 mile portion of PSNH's transmission right-of-way. Since there are no existing AC transmission facilities on the leased portion of the PSNH right-of-way, a related support

agreement is not necessary. Both leases are required by New Hampshire Hydro-Transmission Corporation for the DC transmission line. The terms are based on the cost of service for the

properties, were part of the settlement agreement among the parties and have been accepted by the FERC as a rate schedule.

Upon investigation and consideration of the evidence submitted, the commission finds that the lease agreements are in the public good.

Our order will issue accordingly.

ORDER

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

ORDERED, that pursuant to RSA 369 the commitments relative to cash deficiencies and deficiencies in payments under the Phase II New Hampshire Transmission Facilities Support Agreement, the Phase II Massachusetts Transmission Support Agreement and the Agreement with respect to Amendment of Agreement with respect to Use of Quebec Interconnection be, and hereby are, approved; and it is

FURTHER ORDERED, that pursuant to RSA 369:1-4, the issuance by New England Hydro-Transmission Corporation from time to time, of up to 89,999 additional shares of Common Stock be, and hereby is, approved; and it is

FURTHER ORDERED, that pursuant to RSA 374:30, the lease of 112 miles of right-of-way and AC Transmission Facilities owned by New England Power Company and the related Fifteen Mile Falls Support Agreement be, and hereby is, approved; and it is

FURTHER ORDERED, that pursuant to RSA 374:30, the lease of 9 miles of right-of-way owned by Public Service Company of New Hampshire be, and hereby is, approved.

By order of the Public Utilities Commission of New Hampshire this eleventh day of April, 1988.

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NH.PUC*04/11/88*[51971]*73 NH PUC 165*Pinetree Power — Tamworth, Inc.

[Go to End of 51971]

73 NH PUC 165

Re Pinetree Power — Tamworth, Inc.

DR 86-028
Supplemental Order No. 19,059

New Hampshire Public Utilities Commission

April 11, 1988

SUPPLEMENTAL order approving long-term avoided cost rate change and certain interconnection agreement changes.

COGENERATION, § 25 — Rates — Avoided costs — Interconnection agreement.

[N.H.] The commission approved an amendment to a long-term rate order between a small power producer and an electric utility, allowing for a long-term avoided cost rate change to reflect lower loss factors resulting from interconnection of the project to the utility's system at transmission voltage rather than at primary voltage, and approved certain changes to the interconnection agreement that had been previously authorized.

By the COMMISSION:

SUPPLEMENTAL ORDER

WHEREAS, by order no. 18,112 dated February 11, 1986 (71 NH PUC 123) in this docket, the commission granted,*nisi,* the long term avoided cost rate petition of Pinetree Power — Tamworth, Inc. (PPTI)

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pursuant to *Re Small Energy Producers and Cogenerators,* docket no. DE 83-062, 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); and

WHEREAS, following the expiration of the *nisi* period and the resolution of subsequent proceedings before the commission, the long term rate petition became effective and final; and

WHEREAS, on April 6, 1988, PPTI filed an APPLICATION OF PPTI FOR AN AMENDMENT OF ITS LONG TERM RATE ORDER (Amendment); and

WHEREAS, the Amendment proposes that the long term rates granted the project be reduced to reflect lower loss factors resulting from interconnection of the project to the Public Service Company of New Hampshire (PSNH) system at transmission voltage rather than primary voltage; and

WHEREAS, the Amendment also proposes certain changes to the Interconnection Agreement between PPTI and PSNH previously approved by the commission in order no. 18,112; and

WHEREAS, PPTI represents that it has been authorized to state that PSNH does not oppose the granting of the Amendment; and

WHEREAS, the Amendment appears to be consistent with the requirement of docket nos. DE 83-062 and DR 85-215, *supra;* it is therefore

ORDERED, that PPTI's Amendment for a long term avoided cost rate change and for certain changes to its Interconnection Agreement are approved.

By order of the Public Utilities Commission of New Hampshire this eleventh day of April, 1988.

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NH.PUC*04/12/88*[51972]*73 NH PUC 166*Telephone and Data Systems, Inc.

[Go to End of 51972]

73 NH PUC 166

Re Telephone and Data Systems, Inc.

Additional party: Chichester Telephone Company, Inc.

DE 88-010
Order No. 19,060

Re Chichester Telephone Company

DC 87-189
Order No. 19,060

New Hampshire Public Utilities Commission

April 12, 1988

ORDER approving telephone utility acquisition and dismissing quality of service complaints.

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1. CONSOLIDATION, MERGER, AND SALE, § 7 — Jurisdiction, powers, and duties of commissions — Approval of sale — Public good.

[N.H.] Pursuant to statute, a public utility may transfer its franchise, works or system when the commission finds that it shall be for the public good, so that commission permission is required if the proposed contract of sale involves a surrender of control of operation; the commission may only allow an entity to engage in business as a public utility where it finds that the exercise of that right, privilege, or franchise is in the public good, and in the course of its investigation, the commission is obligated to find out whether the acquiring party is ready, willing and able to continue providing adequate service. p. 172.

2. CONSOLIDATION, MERGER, AND SALE, § 18 — Grounds for approval — Telephone utility — Factors considered.

[N.H.] The acquisition of a telephone utility by another telephone utility was approved where the commission concluded that the acquisition: (1) would not result in detriment to consumers, investors or other legitimate state concerns; (2) would result in more economically efficient provision of service; and (3)

would not result in increased rates because the acquiring utility would recover the difference between book value and acquisition cost from increased operating efficiencies. p. 173.

APPEARANCES: Dom D'Ambruoso, Esq. of Ransmeier and Spellman on behalf of Telephone and Data Systems, Inc. and Chichester Telephone Company; and Mary C.M. Hain, Esq. on behalf of the Staff of the New Hampshire Public Utilities Commission.

By the COMMISSION:

This report concerns three petitions: 1) the quality of service complaint of 181 subscribers of Chichester Telephone Company (Chichester), 2) the joint petition of Telephone and Data Systems, Inc., (TDS) and Chichester for approval of the acquisition by TDS (or a wholly-owned subsidiary of TDS) of the capital stock of Chichester, and 3) the quality of service complaint of Mr. and Mrs. Burleigh of Dover Road, Chichester. This report sets forth the procedural history of the case, findings of fact, and analysis. The report approves the acquisition and dismisses the subscriber complaint.

REPORT

I. *Procedural History*

On September 29, 1987, 181 subscribers of Chichester Telephone Company submitted a petition complaining of several quality of service problems, specifically the frequent loss of dial tone and the inability to place and receive local and long distance calls. The petition requested that the switching office and outside plant facilities of Chichester Telephone Company (Chichester) be updated and that service be improved. By an order of notice dated October 16, 1987, the commission opened docket DC 87-189, *Re Chichester Teleph. Co.*, for the purpose of investigating the petition. By this order of notice the commission scheduled a hearing for December 1, 1987.

On November 13, 1987, Chichester filed a letter asking the commission to convene the December 1, hearing for the purpose of hearing only the customer complaints. It prayed that the commission continue the portion of the hearing concerning the company's response to these complaints to give the company a one month period after the hearing to prepare its response. On November 24, 1987, the commission issued order no. 18,918 in which it ordered that the December 1, 1987, hearing should be held for the purpose of allowing customers to present their complaints and to establish a procedural schedule for a full investigation of the complaints raised thereby.

At the hearing on December 1, the commission listened to twenty-five complaints in the form of public comments. The parties presented an oral agreement concerning the discovery schedule and other procedural matters.

By report and supplemental order no. 18,949, dated December 29, 1987, the commission approved the proposed procedural agreement. The approved procedural agreement established March 8, 1988, as the hearing date at which the company would present its evidence concerning the adequacy of its service. The agreement also provided that after the March 8 hearing, a supplemental procedural schedule would be determined, and a later hearing date set, to allow the staff and the

consumer advocate to present their cases concerning the adequacy of service, and to allow all parties to address the possible solution to be implemented should the company's service be found inadequate.

On January 8, 1988, TDS and Chichester jointly petitioned the commission, to the extent of its jurisdiction under Title XXXIV, for approval of the acquisition by TDS (or a wholly-owned subsidiary of TDS) of the capital stock of Chichester. On January 14, 1988, Chichester requested that the commission indefinitely continue the procedural schedule in docket DC 87-189, pending a commission decision on the joint petition. This continuance was requested for the purpose of facilitating the TDS acquisition of Chichester and TDS' proposed modernization plan for improved service of the franchise area.

By second supplemental order no. 18,985, the commission denied the request for continuance. The commission found that the continuance was not in the public interest because the large number of quality of service problems demanded immediate attention, and because the simultaneous investigation of the acquisition proposal and the subscriber complaint would not retard the commission's consideration in either docket.

On January 11, 1988, John R. Wilson filed a letter on behalf of Mr. and Mrs. Burleigh of Dover Road in Chichester, New Hampshire. This letter detailed a customer complaint and requested that the commission investigate the complaint. The petitioner alleged that in an emergency medical situation, a hospital employee was unable to place a call to the Burleigh's home. The petitioner alleged that every time the call was attempted by the hospital employee, the caller received a message that the number dialed was not in service.

On January 20, 1988, the commission notified Wilson that the Burleigh customer complaint would be incorporated into docket no. DC 87-189 and that the Burleighs would be considered a necessary party to the proceeding. On January 29, 1988, Chichester filed a response to the complaint denying responsibility for the service problem contained in the Burleigh complaint.

By order no. 18,995, issued February 9, 1988, the commission opened *Re Telephone and Data Systems, Inc. and Chichester Teleph. Co., Inc.,* docket no. DE 88-010 to investigate the acquisition petition. It consolidated docket no. DC 87-189 into docket DE 88-010, pursuant to N.H. Admin. Code Puc 203.07. By this order, the commission scheduled a hearing pursuant to RSA Chapter 374, including, *inter alia,* RSA 374:7, 374:22, 374:26, 374:30, and 374:42 on March 8, 1988. This order required, among other things, that the petitioner's prefiled testimony contain specific proposals, including a schedule for implementation of a plan, to address the quality of service issues emerging in docket DC 87-189.

The hearing on the merits of the acquisition petition and Chichester's testimony concerning the customer complaints was held as scheduled. Public comments were heard at the hearing. Neither Mr. and Mrs. Burleigh nor Mr. John R. Wilson appeared at the hearing.

II. *Positions of the Parties*

A. The Chichester Quality of Service Complaint

1. Chichester

In defense of the allegation that Chichester has not provided an adequate level of service,

Chichester asserted that it

recognized the troubles that existed in its network and had taken steps to rectify these problems. It argued that it has operated as a frugal company which has kept expenses down, kept dividends low, and reinvested its capital over the years. It averred that all of these actions have kept rates low. It maintained that the acquisition was the appropriate resolution of the customer complaint docket.

Chichester also argued that certain of the trouble incidents were beyond Chichester's control. Specifically, it alleged that the trouble reports occurring in July of 1987 and September of 1987 were caused by the operation of interconnecting companies.

2. Staff

The staff supported the acquisition petition as a solution to the customer complaint portion of the docket. At the hearing, the staff reserved its right (established in report and supplemental order no. 18,949, December 29, 1987) to present testimony on the issue of quality of service in the customer complaint portion of the docket in the event that the commission did not approve the acquisition.

The staff contended that Chichester had not met its burden of proof concerning its allegations that certain troubles were caused by the operation of interconnecting companies. Chichester did not subpoena witnesses or present any factual evidence concerning these trouble reports.

B. The Acquisition Agreement

1. TDS and Chichester

The petitioners take the position that approval of this joint petition is in the best interests of Chichester's customers because:

a. TDS, the acquirer, has considerable expertise in subscriber-based telecommunications services;

b. TDS has a proposed modernization plan for implementation as soon as practicable after the closing; and

c. TDS has a proposed construction and expansion program, the primary purpose of which will be to provide for normal growth and to upgrade to digital central office equipment.

2. Staff

The staff supported the acquisition petition. The staff stated that upon initial review of the petition, it had three major concerns about the petition. First, the staff wanted assurances that a plan would be developed (and would be implemented) that would expeditiously correct the quality of service problems that Chichester customers were, and still are experiencing. Second, the staff wanted TDS to have enough organizational and managerial control after the acquisition to carry out this plan and to insure the provision of high quality service. Third, the staff wanted to make sure that the acquirer would not try to recover the difference between the acquisition price and the book price of the existing stock by increasing rates.

As a result of the discovery process, the staff stated that it had received adequate assurances from the petitioners concerning the above issues. The staff argued that the proposed acquisition is in the public good pursuant to RSA 374:30. The staff averred that the acquisition is in the public good specifically because service has been improving in the Chichester service area due to the maintenance and service being done to Chichester's facilities by TDS.

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III. *Findings of Fact*

A. The Chichester Quality of Service Complaint

The evidence indicated that Chichester Telephone Company was only conducting maintenance to the central office switch on an “as needed” basis. Maintenance and routining of the switch is required on an ongoing basis. Routining is a process involving the cleaning, adjusting, pulsing, lubricating, and replacement, as needed in the following switch equipment:

1. subscriber originating trunks,
2. subscriber terminating trunks,
3. connectors,
4. selectors,
5. trunks,
6. alarms,
7. automatic number identification,
8. registers, and
9. power supplies — tone supplies.

Diagnostics of call routing and call completion also were not being performed. Such diagnostics also need to be conducted on an ongoing basis to pinpoint call completion and traffic congestion problems.

TDS has a trouble reporting system that documents and records all customer trouble reports. For 1987, the system trouble index for all TDS operating companies was 3.62 trouble reports per 100 access lines per month. The troubles related to central office equipment comprised .31 of the total 3.62 troubles. TDS' testing of Chichester's facilities indicated that the current level of service provided to customers would not meet TDS' standards of service with respect to central office equipment performance. However, TDS observed that the outside plant facilities are in acceptable condition and that the digital subscriber carrier equipment in Loudon is giving good service performance. Chichester did not submit any factual evidence tending to prove that the trouble complaints received on July and September of 1987 were caused by other carriers and were, therefore, beyond its control.

B. The Acquisition Agreement

1. Terms and Conditions

On January 4, 1988, TDS entered into an agreement with the shareholders of Chichester Telephone Company to acquire all the outstanding capital stock of the company. The agreement provides for the exchange of 22 shares of TDS Series AA preferred stock for each share of

Chichester common stock. The TDS preferred stock has a stated value of $100 and has a dividend rate of 7%. The TDS series AA preferred stock can be converted to TDS common stock at a ratio of 1:4 within 5 years of issuance. TDS may redeem the series AA preferred shares commencing on the tenth anniversary of their issuance for $100 per share plus the amount of any accumulated unpaid dividends.

TDS calculated the per share book value of Chichester in the following manner:

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

TDS common stock, par value $25 per share with 612 shares issued and outstanding	$ 15,300
Paid-in capital	5,387
Retained earnings	771,928
Total	791,715

$791,715/612 Shares = $1,293.65 Book
$791,715/612 Shares = Value Per Share

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Assuming the market value of $25.50 for TDS common stock on December 13, 1987 (the date of the offer), and the coincident conversion of AA preferred to TDS common (1:4), the market to book ratio of the Chichester stock would be $2,224 (25.50 × 4 × 22) to $1,293, or 1.74.

The agreement contains the signatures of shareholders owning 599 of the outstanding 612 shares of Chichester capital stock; representing 97% of the outstanding shares of capital stock. The closing of the acquisition contract will occur within 10 days of the commission's approval.

The agreement provides for a pension payment to the current manager of $1,250 per month for sixty months. Under the agreement, the present business financial consultant will receive $200 a month for thirty-six months for transition and continued advice and services.

2. Proposed Operations

TDS intends to operate Chichester as a local community telephone company, but will take advantage of TDS' experienced management, operating personnel, and financial resources. TDS will install a new local manager. This manager will take care of the service improvement program, direct and conduct the day-to-day operations of the business office and plant activities, assist with development and training of the local personnel, and interact with the TDS regional management and Wisconsin staff.

TDS plans to expand the board. It intends to have at least one TDS management person on the board of directors. TDS will work with the board of directors to elect the officers of the corporation. The directors who are residents of the local community will continue to serve and new directors will be sought from among local residents.

The TDS regional company will work closely with the Chichester operating company. It will assist Chichester with its business functions including financing, budgeting, planning, construction, correcting service problems, connecting-company matters, cost settlements,

marketing, employee training and wages, benefit program administration, commercial practices, work order procedures, inventory control, monthly accounting and financial statements, audit coordination, regulatory and REA reports, tax preparation, voucher payment and review, regulatory matters, plant technology, special studies, directories, corporate matters, and help with day-to-day operations when local management requests assistance. The region concept will facilitate concentration of certain work functions for economy.

TDS will also make available experienced personnel in its Madison and Chicago offices to support Chichester's business operations. Service will be enhanced by the utilization of TDS practices, procedures, and computer software applications to conduct operations and business functions. Chichester will also benefit from the bulk purchasing capability of TDS' seventy-three operating companies.

TDS has demonstrated its ability to operate as a telephone public utility in the state of New Hampshire through its similarly operated enterprises of Meriden Telephone Company and Kearsarge Telephone Company. In general, TDS has demonstrated its emphasis on quality service and plant modernization in these service areas.

3. Proposed Service Improvements

Based on the customer complaints, TDS determined that the service problems at issue relate primarily to the operation of

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the central office. Therefore, with Chichester's consent, TDS replaced the dial tone generator and batteries, connected a 100 amp charger, and installed a traffic maintenance unit. TDS is also in the process of routining the existing central office NX2A switch. It proposes to have routining completed by April 1, 1988. TDS is also in the process of tuning up, testing and placing into service idle and spare equipment and regrouping customers onto low traffic trunks and adding additional trunks based on usage. This work is ongoing and will continue beyond April 1, 1988. TDS will also check call processing through the line finder, the subscriber originating trunk, the register, the number group, the selector, and the connecting control to the connectors.

Chichester and TDS agreed to file a request for Rural Electrification Administration loan financing. The financing would be used to convert the existing central office equipment to digital technology. The new digital equipment will have the capacity to serve a larger number of access lines to meet the growth in demand in the service area and will have the technology to provide additional services. In May of 1988, TDS will have completed an area coverage design (ACD) that includes the development of a plan to upgrade and provide service to all existing and future customers for the next five years. The proposed cut-over of the digital switch will occur in November of 1989. TDS will do a special study to ascertain the building structure requirements to house the digital switch equipment. It will include these requirements in its ACD.

4. Financial and Rate Issues Concerning the Post Acquisition Company

TDS does not propose any immediate changes in the capital structure. However, it proposes to change the capital structure within the next twelve months to reflect the infusion of the REA

debt, together with the continued reinvestment of earnings.

The management and service improvement plan will not result in a request for a rate increase in the short run. The management plan does not add to operating costs and should reduce costs. There will be no reevaluation of assets as a result of the acquisition. Over the long run, the company will request rate increases as necessary to compensate for future plant investments and engineering costs for service improvement and modernization.

IV. *Commission Analysis*

A. The Acquisition Agreement

[1] The commission finds that the acquisition will assure safe and adequate service to Chichester's customers and is in the public good. Pursuant to RSA 374:30 a "public utility may transfer . . . its franchise, works or system . . . when the commission finds that it shall be for the public good . . . ." Under this provision, the commission's permission is required if the proposed contract involves a surrender of control of operation. *New Hampshire v. New Hampshire Gas & E. Co.,* 86 N.H. 16, PUR1932E 369, 163 Atl. 724 (1932).

In construing a similar provision of the Federal Power Act, 16 U.S.C.A. §8251(b), the ninth circuit federal court of appeals found that the purpose of the federal provision was to insure against public disadvantage through the requirement of a showing that mergers "will not resort in detriment to consumers or investors or to other legitimate national concerns." *Pacific Power &*

Light Co. v. Federal Power Commission, 111 F.2d 1014, 1016, 34 PUR NS 153 (1940). The court found that the evidentiary requirement under the statute was that the applicant must make a full disclosure of all material facts and that the burden is on the applicant to show that the acquisition is consistent with the public interest. *Id.* at 1017.

In addition, this investigation must also be carried out under the provisions of RSA 374:22 and 374:26. In other words, the commission may only allow an entity to engage in business as a public utility where it finds that the exercise of that right, privilege, or franchise is in the public good. In the course of this investigation then, the commission is obligated to find out whether the acquiring party is ready, willing, and able to continue providing adequate service. *Blue Grass State Teleph. Co. v. Kentucky Pub. Service Commission,* 55 PUR3d 428, 382 S.W.2d 81, 83 (1964).

[2] We find that the acquisition is in the public interest because the above-mentioned findings of fact demonstrate that the acquisition will not resort in detriment to consumers or investors, or to other legitimate state concerns. The company has met this burden of proof. In fact, this acquisition has facilitated, and will continue to facilitate the improvement of the quality of service in the service area. In addition, it will result in the more economically efficient provision of service. Investigation of the digital upgrade is also in the public interest as the new equipment may be necessary to meet the needs of projected subscriber line growth, and providing more technologically enhanced services.

While the stockholders will be paid more than the book value in exchange for the stock, the transaction price has facilitated the buy-out of this troubled utility. In addition, the company does

not propose to recover the difference between book value and its acquisition cost through increased rates, but will recover the difference from increased operating efficiencies. Therefore, the company has proven that the acquisition is in the public good. However, the commission will reserve judgement on whether to allow certain of the elements of the acquisition to be recovered in a rate proceeding (*e.g.*, the $200 per month payment to the business financial consultant.)

As set forth in the findings of fact the company is ready, willing, and able to provide service. Therefore, it is in the public interest to approve the transfer of authority to operate as a public utility to TDS.

B. The Chichester Quality of Service Complaint

We will dismiss the investigation of the petition of the 181 subscribers and of the Burleigh complaint. The acquisition, and the improvement and update plan will address the quality of service problems experienced by these petitioners and provide them with the relief they requested.

Our order will issue accordingly.

ORDER

ORDERED, that pursuant to RSA 374:22, 374:26, and 374:30 the joint petition of Telephone and Data Systems and Chichester Telephone Company for approval of the acquisition of Chichester Telephone Company's capital stock by Telephone and Data Systems is approved; and it is

FURTHER ORDERED, that Telephone and Data Systems shall comply with the plan for improvement of service in the Chichester Telephone Company service area as set forth in the foregoing report

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and as further described in the record; and it is

FURTHER ORDERED, that the investigation of the petition of the 181 subscribers shall be dismissed; and it is

FURTHER ORDERED, that the investigation of the service complaint of Mr. and Mrs. Burleigh of Dover Road, Chichester shall be dismissed; and it is

FURTHER ORDERED, that TDS will file a letter with the commission (to be included in the closed commission file in this proceeding), indicating its compliance with the milestones of the improvement plan as set forth in the foregoing report.

By order of the Public Utilities Commission of New Hampshire this twelfth day of April, 1988.

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73 NH PUC 174

Donna L. Toto
v.
Public Service Company of New Hampshire

DC 87-139
Order No. 19,061

New Hampshire Public Utilities Commission

April 13, 1988

ORDER crediting an electric customer's account as a remedy for overcharges.

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1. SERVICE, § 306 — Connections, instruments, and equipment — Electric meter test — Customer representation.

[N.H.] Pursuant to commission regulations, an electric utility customer may be represented in person or by an agent when the utility conducts a test on the meter, and when a request for a meter test has been received, the utility shall not knowingly remove, interfere with, or adjust the meter to be tested without the written consent of the customer and approval by the commission. p. 176.

2. PAYMENT, § 24 — Billing, metering, and collections — Low voltage levels — Failure to comply with commission rules — Billing credit.

[N.H.] Due to an electric utility's failure to comply with commission rules, evidence that would have specifically indicated whether the utility had provided proper levels of voltage to a residential customer was unavailable, but because the inefficient and abnormal operation of the customer's appliances coupled with higher than normal usage was consistent with the provision by the utility of lower voltages than required, it was held that the utility had provided lower than required voltage thereby causing the high usage by the customer; therefore, the utility was not entitled to collect the extra amounts of the bills related to the low voltage, and a credit was ordered given to the customer's account in an amount equal to the charge of the excess kilowatt-hours billed over the same months of service in the previous year. p. 176.

APPEARANCES: Donna L. Toto, *Pro Se* and Pierre Caron, Esquire on behalf of Public Service Company of New Hampshire (PSNH).

By the COMMISSION:

REPORT

On July 21, 1987, Ms. Donna L. Toto of 102A Fremont Road, Raymond, filed a verbal high bill complaint against Public Service Company of New Hampshire (“PSNH” or the “Company”). The Commission scheduled a hearing for August

17, 1987 at 10:00 a.m. at their offices on 8 Old Suncook Road, Concord, New Hampshire.

I. *Positions of the Parties*

Ms. Donna Toto averred that she had been overbilled for service beginning with her January bill and continuing until July 21, 1987. She argued that her meter had been changed without sufficient notice to her. She claimed a power surge had damaged her television and VCR.

The company argued that the meter was tested and that it was calibrated within the guidelines established by the Commission's rules. It averred that since the meter measured the usage correctly, the complainant was liable for the usage as measured.

PSNH argued further that the high reading of 3303 Kwh on the February 23, 1987 billing was the result of a 1,000 Kwh under-read on the January 22, 1987 billing. It argued that an inexperienced meter reader read the meter in January, and that he under-read the meter by reading the number “9” as the number “0.”

II. *Findings of Fact*

The complainant Donna Toto is a residential electric service customer of PSNH. An examination of her bills shows the following facts concerning her electric usage for the months in question.

The complainant's average Kwh per day was 103 Kwh in February of 1987 compared to 14 Kwh in February of 1986. For the bills rendered in March through June of 1987, the average Kwh per day was 17 Kwh higher than the usage measured for the same period in 1986. Ms. Toto had the same appliances during the above mentioned periods. The usage went back to average levels after PSNH replaced the complainant's meter. More specifically, usage dropped below 1986 levels for the month of August 1987.

The complainant's meter read 3303 Kwh for purposes of the February 23, 1987 billing. Facts in the record indicate that part of this high usage was due to a 1,000 Kwh under-read on the January 22, 1987 billing. However, the company did not produce any credible evidence to explain the consistently above average usage during the period in question.

Facts in the record indicate that the sequence of events previous to the filing of the complaint, was as follows. The company checked the temperature of the complainant's water heater and checked the reading on the meter while turning on and off individual circuits and appliances. During the test, lights were blinking off and on and dimming. The PSNH appliance and auditor noted that Ms. Toto's refrigerator was running hot. The Company conducted a meter test. The Company mailed a copy of the meter test to the complainant that the complainant did not receive. The meter test showed that the meter was calibrated as follows: light load — 102.8%, heavy load — 100.8%, and weighted average accuracy of 101.2%.

Ms. Toto's electric outlets were checked with a voltage meter by a family member. The voltage was low. After her meter was subsequently changed, the voltage was back to normal levels. However, the complainant's T.V. and VCR sustained damage from a power surge after PSNH changed her meter.

On July 21, 1987 PSNH changed Ms. Toto's meter because debris had accumulated inside the meter glass and because there was a broken plastic blade protector on the outside of the meter. The meter was replaced because the debris could cause

the meter to slow down and the broken protector could cause a flash-over hazard. The complainant was not notified in advance that the meter would be changed and was not at home when the change was made.

III. *Commission Analysis*

Several issues were presented for decision in this proceeding.

1) Did the customer's meter correctly measure the customer's usage of electricity from January 22, 1987 through July 21, 1987?

2) Did the Company comply with the rules governing the testing of meters?

3) Did the company comply with the Commission's rules concerning voltage levels and voltage complaints?

4) Did the Company make a full and prompt investigation of this customer complaint?

5) Is the Company responsible for the damage to customer's equipment that results from voltage surges?

6) Is any refund or credit required in this case?

The customer's meter was running within the meter accuracy standards established under N.H. Admin. Code Puc § 305. Therefore, the customer's meter correctly measured the usage.

[1] Under N.H. Admin. Code Puc 305.03(d)(2) the company is required, upon request, to supply a meter report to a customer who requests a meter test. The record does not indicate that a report was requested. This rule also states that a customer may be represented in person or by an agent when the utility conducts the test on the meter. The company did not comply with the meter test rule in that the customer was not notified in advance of the test and, therefore, did not have an opportunity to be present or to appoint an agent to be present at the time the meter was tested.

This rule also provides that when a request for a meter test has been received, the utility shall not knowingly remove, interfere with, or adjust the meter to be tested without the written consent of the customer, approved by the commission. As the complainant pointed out, no consent was signed. Because the original test was not conducted in accordance with the rules and no consent for removal was received, the company further disobeyed commission rules by removing the meter.

Pursuant to N.H. Admin. Code § 304.02 PSNH is required to furnish electric service at certain voltages. In the case of Ms. Toto, PSNH did not provide any information on the record to show the voltage level that it would allege to be appropriate under this rule for the service in question. Further, it did not produce any evidence to show compliance with this rule.

[2] PSNH is also required to take voltage surveys and keep voltage meter records under N.

H. Admin. Code Puc § 304.03. This information was not provided at the hearing to prove that the voltage was provided at the correct level.

In accordance with N.H. Admin. Code Puc § 303.05 utilities are required to make a full and prompt investigation of customer complaints. In this case the company did not comply with the commission's rule. Although Ms. Toto did not specifically register a voltage complaint by name, she did register a

complaint about high usage. The company was on notice that such high usage, in this case, may have been caused by low voltage. Although the company has the affirmative duty to fully investigate, to furnish the correct voltage, to notify the commission of and investigate voltage complaints, it did not file any voltage, surveys, records, or investigations as part of the record in this proceeding under N. H. Admin. Code §§304.03 and 303.05 respectively; or include in its quarterly report to the commission any reference to this complaint in derogation of §308.01. The company may not abdicate its responsibility to investigate a voltage complaint merely because the customer is not sophisticated enough to know how to ask for it by name where it is part of investigating a high bill complaint and the Company has knowledge of the voltage problem.

Due to PSNH's failure to comply with commission rules, evidence that would have specifically indicated whether PSNH provided proper levels of voltage was unavailable. The inefficient and abnormal operation of complainants appliances and higher than normal usage is, however, consistent with PSNH providing lower voltages than those required by the rules. Thus, based upon the record before us, we find that PSNH provided lower than required voltage thereby causing the customers high usage. For this reason, we find that PSNH is not entitled to collect the extra amounts of the bills for the period of January 22, 1987 through July 21, 1987 related to the low voltage. To provide the most accurate billing possible, we find that a credit should be given to the customer's account in an amount equal to the charge of the excess kilowatt-hours billed over the same months of service in the previous year.

In answer to Ms. Toto's complaint for damages for the destruction of her appliances due to voltage surges we find that this is not a matter over which we have jurisdiction. This is a matter for the courts.

Our Order will issue accordingly.

ORDER

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

ORDERED, that due to the Company's failure to comply with the rules, it has not been able to provide evidence that it is entitled to collect the amounts of the bills for the period of January 22, 1987 through July 21, 1987; therefore, the customer shall receive a credit in an amount equal to the charge for the excess kilowatt-hours billed over the amounts billed in the same months of service in the previous year.

By order of the Public Utilities Commission of New Hampshire this thirteenth day of April, 1988.

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NH.PUC*04/14/88*[51974]*73 NH PUC 177*Dunbarton Telephone Company

[Go to End of 51974]

73 NH PUC 177

Re Dunbarton Telephone Company

DF 88-35
Order No. 19,062

New Hampshire Public Utilities Commission

April 14, 1988

ORDER approving loan for telephone utility facility improvements.

SECURITY ISSUES, § 58 — Purposes and subjects of capitalization — Additions and betterments — Telephone facility improvements.

[N.H.] A telephone utility was authorized to borrow $630,000 from the Rural Electrification

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Administration Bank and use the proceeds for the construction of new cable and poles, new subscriber carrier equipment, additional equipment for digital switch service, and facilities to upgrade remaining four-party lines.

By the COMMISSION:

ORDER

WHEREAS, Dunbarton Telephone Company, a New Hampshire Corporation having its principal place of business in Dunbarton, Merrimack County, filed a petition on March 18, 1988 for authority for a Rural Electrification Administration Bank Loan in the amount of $630,000; and

WHEREAS, Dunbarton Telephone Company alleges in its petition that its presently authorized long-term debt consists of authorized borrowing of which the amount presently outstanding as of December 31, 1986 was $467,527; and

WHEREAS, Dunbarton Telephone Company has no short-term debt, and its presently authorized common stock consists of 70 shares having a par value of $25 per share with 58 shares issued and outstanding valued at $1,450; and

WHEREAS, Dunbarton Telephone Company has entered into an agreement with the Rural

Telephone Bank to issue to it $630,000 in mortgage notes payable over a thirty-five (35) year period, with interest at 7.5% per annum; and

WHEREAS, Dunbarton Telephone Company proposes to use the proceeds of this loan for the construction of additional telephone lines including new cable and poles in their exchange area, new subscriber carrier equipment and additional equipment for digital switch service as well as facilities to upgrade the remaining four-party lines; and

WHEREAS, Dunbarton Telephone Company filed the requisite minutes of a special meeting of the stockholders authorizing the proposed financing, and also filed Balance Sheet as of December 31, 1986 proformed to reflect the effect of the financing; detail of expenses and income projection proforma through 1991; depreciation schedule; rate base and capitalization ratios; proforma Income Statement and copies of Mortgage Note, Telephone Loan Contract Amendment; 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 Dunbarton Telephone Company be, and hereby is, authorized to issue and sell its secured promissory note in the aggregate principal amount of six hundred thirty thousand dollars ($630,000) said note to bear interest at the rate of seven and one-half percent (7.5%) per annum, payable over a period of thirty-five (35) years, and to be secured by a mortgage and security agreement applicable to all the petitioner's property presently owned or after acquired, including its franchises and said borrowing to be subject to the provisions of the proposed telephone loan contract, the provisions of which proposed telephone loan contract, proposed secured promissory note and proposed mortgage and security agreement are as set forth in the exhibits attached to the petition and on file with the Commission; and it is

FURTHER ORDERED, that the said secured promissory note will be issued for the construction of additional telephone lines including new cable and poles in their exchange area, new subscriber carrier equipment and additional equipment for digital switch service as well as facilities

to upgrade the remaining four-party lines; and it is

FURTHER ORDERED, that on January first and July first of each year Dunbarton Telephone Company shall file with this Commission a detailed statement sworn 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.

By order of the Public Utilities Commission of New Hampshire this fourteenth day of April, 1988.

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73 NH PUC 179

Re Concord Natural Gas Corporation

DR 87-243
Supplemental Order No. 19,063

Re Gas Service, Inc.

DR 87-244
Supplemental Order No. 19,063

Re Manchester Gas Company

DR 87-245
Supplemental Order No. 19,063

New Hampshire Public Utilities Commission

April 15, 1988

ORDER authorizing three gas utilities to implement temporary rates.

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1. RATES, § 85 — State commission powers — Over temporary rates — Duty to investigate.

[N.H.] The commission's power to set temporary rates is discretionary and shall be exercised only when such rates are in the public interest; the commission's duty to investigate a temporary rate request is less than is required when setting permanent rates, and any overrecovery or underrecovery resulting from the temporary rates will be addressed by allowing the customers or company recoupment of such overrecovery or underrecovery. p. 181.

2. RATES, § 630 — Temporary rates — Gas utilities.

[N.H.] Three gas utilities were authorized to implement temporary rates at the level of authorized permanent current rates. p. 181.

APPEARANCES: Jacqueline Fitzpatrick, Esquire and David W. Marshall, Esquire of Orr and Reno, P.A., for Manchester Gas Company; Larry Eckhaus, Esquire for the Consumer Advocate; and Mary C.M. Hain, Esquire on behalf of the Commission Staff.

By the COMMISSION:

REPORT REGARDING TEMPORARY RATES AND PROCEDURAL SCHEDULE FOR PERMANENT RATE INVESTIGATION

This report addresses petitions by Manchester Gas Company, Concord Natural Gas Corporation, and Gas Service, Inc. for temporary rates. The report discusses the procedural

history, and the commission authority to implement temporary rates. It also provides findings of fact and analysis. The report and the order attached hereto authorizes temporary rates at the current permanent rate level.

I. *Procedural History*

On January 28, 1988 Concord Natural Gas Corporation (Concord) filed revised

tariff pages designed to increase gross annual revenues by $589,682 net of the cost of gas. On January 28, 1988 Gas Service, Inc. (Gas Service) filed revised tariff pages designed to increase gross annual revenues by $1,081,892 net of the cost of gas. On January 28, 1988 Manchester Gas Company (Company) filed revised tariff pages designed to increase gross annual revenues by $970,296 net of the cost of gas.[1(17)] The proposed tariffs would apply to bills rendered on and after February 28, 1988.

On February 11, 1988 the companies filed a petition for temporary rates pursuant to Section RSA 378:27. The petition for temporary rates of Manchester Gas requested that it be allowed to implement rates designed to collect an additional amount of $970,296 annually effective with bills rendered on and after February 28, 1988. The petition for temporary rates of Concord requested that it be allowed to implement rates designed to collect an additional amount of $589,682 effective with bills rendered on and after February 28, 1988. The petition for temporary rates of Gas Service requested that it be allowed to implement rates designed to collect an additional amount of $1,081,892 effective with bills rendered on and after February 28, 1988.

On February 18, 1988, by orders no. 19,012, 19,013, and 19,014 the commission suspended the effective date of the permanent rate tariffs, pursuant to RSA 378:6. On February 25, 1988, the commission entered an order of notice setting a hearing for April 13, 1988 on the following issues, *inter alia:* 1) whether temporary rates should be allowed pursuant to RSA 378:27, 2) whether, under 378:7, the commission is obligated to investigate the petition since the commission has investigated the companies' rates within a two year period of the filing, 3) what procedural schedule should be followed in the permanent rate investigation, and 4) what parties should be allowed to intervene. By our order of notice we required the petitioners to give notice of the matters set forth in the order of notice to the general public by publication and to the individual customer using a bill insert. On March 4, 1988, the commission issued a supplemental order of notice that allowed the companies to use the proposed bill insert notice submitted with their motions dated March 2, 1988.

On April 13, 1988, a hearing was held regarding the above-mentioned issues. The only parties present were the companies, the commission staff and the consumer advocate. The commission consolidated these cases from the bench. The parties presented a stipulation entitled Temporary Rate Stipulation Agreement dated April 13, 1988, which consisted of an agreement between the companies, staff and consumer advocate recommending that the commission authorize temporary rates for the companies at current permanent rate levels as a disposition of the petition for temporary rates and setting a procedural schedule for the permanent rate investigation.

The staff reserved its rights to raise, present testimony and cross-examination, and argue the issue of whether the commission was obligated to investigate the permanent rate petition since the commission has investigated the company's rates within two years. The parties stipulated to the entering of all prefiled testimony as exhibits in this proceeding but reserved their rights to cross-examination concerning any permanent rate issues that may be raised therein. The parties proposed the following schedule for proceeding in this case:

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

May 27, 1988	Staff and Intervenor Data Requests submitted to Company
June 10, 1988	Company response due to Staff and Intervenor Data Requests re: Rate of Return
June 17, 1988	Company response due to Staff and Intervenor Data Requests re: all other issues
July 1, 1988	Staff and Intervenor Direct Testimony and Exhibits due re: Rate of Return
July 8, 1988	Company Data Requests submitted to Staff and Intervenor re: Rate of Return
July 22, 1988	Staff and Intervenor responses due to Company re: Rate of Return
August l, 1988 (9:00 a.m.)	Off-The-Record prehearing settlement conference re: Rate of Return
August 5, 1988	Staff and Intervenor direct testimony due re: all other issues
August 12, 1988	Company Data Requests submitted re: all other issues
August 26, 1988	Staff and intervenor responses due to Company re: all other issues
September 6, 1988 (10:00 a.m.)	Off-The-Record prehearing settlement conference re: all other issues
September 14, 15, 20, 22, 1988 (10:00 a.m. each day)	Hearing at Commission offices, 8 Old Suncook Road, Concord, New Hampshire
September 23, 1988	Reserved for Hearing if necessary
October 7, 1988	Briefs of Parties, if any, due

The consumer advocate and the companies also requested expedited treatment of the permanent rate case.

II. *The Commission's Authority*

[1] The commission's power to set temporary rates is explicitly authorized by statute. RSA § 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 giving the customers a rebate of the overrecovery or by allowing the company to recoup any underrecovery. *See New Hampshire v. New England Teleph. & Teleg. Co.*, 103 N.H. 394, 40 PUR3d 525, 173 A.2d 728 (1961).

III. *Findings and Analysis*

[2] After a complete review we will approve the fixing of temporary rates at the level of permanent current rates as agreed by the parties. We find that said rates comply with the statutory requirements of RSA § 378:27. Temporary rates

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shall become effective with all bills rendered on or after April 15, 1988.

The commission finds the recommended schedule reasonable and shall, by the order attached hereto, order the schedule to govern the proceedings in this matter. We will expect the parties to make a good faith effort to comply with the schedule.

Our order will issue accordingly.

SUPPLEMENTAL ORDER

Upon consideration of the foregoing REPORT REGARDING TEMPORARY RATES AND PROCEDURAL SCHEDULE FOR PERMANENT RATE INVESTIGATION, which is incorporated herein by reference, it is hereby

ORDERED, that Concord Natural Gas Corporation, Manchester Gas Company, and Gas Service, Inc. shall be authorized to file and implement temporary rates for bills rendered on or after April 15, 1988, which set such temporary rates at current permanent rate levels; and it is

FURTHER ORDERED, that Concord Natural Gas Corporation, Manchester Gas Company, and Gas Service, Inc. shall, on or before April 15, 1988, file tariffs appropriate to implement temporary rates; and it is

FURTHER ORDERED, that the procedural schedule in the foregoing report shall govern the proceedings in this case unless further ordered by the Commission.

By order of the Public Utilities Commission of New Hampshire this 15th day of April, 1988.

FOOTNOTES

[1]Gas Service, Manchester, and Concord will hereinafter be collectively referred to as the companies.

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NH.PUC*04/18/88*[51976]*73 NH PUC 182*New England Hydro-Transmission Corporation

[Go to End of 51976]

73 NH PUC 182

Re New England Hydro-Transmission Corporation

DE 88-32
Order No. 19,064

New Hampshire Public Utilities Commission

April 18, 1988

PETITION for approval to construct an electric transmission line traversing or paralleling the tracks and properties of a railroad corporation; granted subject to conditions.

CROSSINGS, § 79 — Track-wire crossings — Easements — Grounds for approval — Electric transmission line.

[N.H.] Conditional approval, subject to specified compensation, was granted to an electric utility for permanent easements to cross certain properties of a railroad in accordance with a petition for approval to construct a transmission line traversing or paralleling the tracks and properties of the railroad, where two additional crossings requested by the utility were deemed to be in the public good because they fell within the general consideration and rationale of the commission in a prior order approving three original crossings, and where the utility filed required layout drawings indicating the proposed locations by station number and showing the minimum vertical clearance profile.

By the COMMISSION:

ORDER

WHEREAS, on February 26, 1988, New England Hydro-Transmission Corporation (NEH) filed with this commission, a petition pursuant to RSA 371:24 for approval to construct a 450KVDC transmission line traversing or paralleling the tracks and

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properties of the Boston and Maine Corporation in the New Hampshire Towns of Bath, Haverhill, Andover, Goffstown and Merrimack; and

WHEREAS, in accordance with Commission Report and Order No. 18,499 issued in Docket DE 85-155 on December 8, 1986 (71 NH PUC 727), conditional approval was given for NEH to construct a transmission line traversing or paralleling the tracks and properties of railroads in the Towns of Bath, Andover and Merrimack, New Hampshire; and

WHEREAS, the Petitioner now includes two additional crossings, one each in the Towns of Haverhill and Goffstown, where it is required to traverse land subject to railroad easements, except where railroad tracks no longer exists; thus the proposed transmission line will cross railroad tracks only at the locations originally identified in Appendix G of the Company's May 7, 1985 Application for a Certificate of Site and Facility; and

WHEREAS, in NHPUC Order No. 18,499, the commission has stated that approval would be forthcoming after the company "...files proper plans and layout delineating the routes for the transmission line and adequately compensates the railroads for these easements in accordance with orders to be issued by the Commission before the commencement of construction"; and

WHEREAS, the two additional crossings fall within the general consideration and rationale of the commission in its approval of the three original crossings and are accordingly deemed to be in the public good; and

WHEREAS, NEH has filed the required layout drawings indicating the proposed locations by station number and showing the minimum vertical clearance profile; and

WHEREAS, the Petitioner has filed copies of the easement deeds indicating therein the compensation of six thousand dollars to be paid once for each of the five crossing sites for the perpetual right and easement to construct, reconstruct, repair, maintain, operate and patrol, for the transmission of 450KV direct electric current; and

WHEREAS, the commission finds such railroad property crossings, perpetual rights and easements necessary for the Petitioner to construct the subject line as described in Docket DSF 85-155 to be just and reasonable; it is

ORDERED, that conditional approval, subject to final determination by this commission of DSF 85-155 be, and hereby is granted, pursuant to RSA 371:24 for permanent easements to cross the subject properties of the Boston and Maine Corporation in accordance with the petition, subject to the referenced compensation, at the following approximate Valuation Station locations: Station 153 + 76 (Bath), Station 4204 + 94 (Haverhill), Station at about 465 feet Southwesterly from Mile Post W. R. J. 44 — C26 (Andover), Station; 287 + 85 (Goffstown) and Station 533 + 90 (Merrimack); 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 eighteenth day of April, 1988.

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NH.PUC*04/18/88*[51977]*73 NH PUC 184*Manchester Water Works

[Go to End of 51977]

73 NH PUC 184

Re Manchester Water Works

DE 88-056
Order No. 19,065

New Hampshire Public Utilities Commission

April 18, 1988

ORDER nisi authorizing extension of water utility service.

SERVICE, § 210 — Extensions — Water utility — Hearing request.

[N.H.] A water utility was authorized to extend its mains and service into a municipality where no other water utility had franchise rights, provided that no hearing request on the issue were filed with the commission prior to the effective date of such service.

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 April 1, 1988, seeks authority under RSA 374:22 and 26 as amended, to further extend its mains and service in the Town of Londonderry; and

WHEREAS, no other water utility has franchise rights in the area sought, and the Petitioner submits that the area will be served under its regularly filed tariff; and

WHEREAS, the Board of Selectman, Town of Londonderry, has stated that it is in accord with the petition; and

WHEREAS, after investigation and consideration, this Commission is satisfied that the granting of the petition will be for the public good; and

WHEREAS, the public should be offered an opportunity to respond in support or in opposition before the Commission acts on this petition; it is hereby

ORDERED, that all persons interested in responding to the petition be notified that they may submit their comments to the Commission; or may submit a written request for a hearing in this matter; no later than May 2, 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 April 27, 1988 and designated in an affidavit to be made on copy of this Order and filed with this office on or before May 9, 1988 ; and it is;

FURTHER ORDERED, *NISI* that Manchester Water Works be authorized pursuant to RSA 374:22, to extend its mains and service further in the Town of Londonderry in an area herein described, and as shown on a map on file in the Commission offices:

> An area along Old Derry Road from the existing franchise limits as approved in dockets DE 86-189/#18388 and DE 87-144/#18840, and proceeding southerly 670 feet +/-; to include all lots having frontage along the above forementioned street; thence, 1,900 feet +/- along Old Derry Road to include only those lots along the northerly side, i.e., lots 23-2 to 23-13 as shown on town of Londonderry tax map #16.

and it is

FURTHER ORDERED, that such authority shall be effective on May 9,

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 eighteenth day of April, 1988.

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NH.PUC*04/19/88*[51978]*73 NH PUC 185*South Down Highlands Limited Partnership

[Go to End of 51978]

73 NH PUC 185

Re South Down Highlands Limited Partnership

DS 88-019
Order No. 19,066

New Hampshire Public Utilities Commission

April 19, 1988

ORDER nisi authorizing sewer facility construction on state-owned property.

CERTIFICATES, § 125 — Sewer construction — License to cross state-owned property — Hearing request.

[N.H.] A license was granted for the construction, use, maintenance and repair of sewer connector facilities, concrete storm drain, catch basin and outlet on state-owned railroad property, unless a hearing request on the matter is filed with the commission requiring further proceedings.

By the COMMISSION:

ORDER

WHEREAS, on February 4, 1988, Rist-Frost Associates, P.C. filed with this Commission on behalf of its client, South Down Highlands Limited Partnership, a petition seeking license under RSA 371:17 to construct, use, maintain, repair and reconstruct two 8” PVC sewer connector facilities on State-owned railroad property in Laconia, New Hampshire; at approximate Valuation Station 1640 + 10 and Valuation Station 1643 + 32, both on Map V21/67; and

WHEREAS, said petition also sought license to construct, use, maintain, repair and reconstruct a 24” 4000D reinforced concrete storm drain, catch basin and outlet along cited right-of-way at approximate Valuation Station 1643 + 25 , Map V21/67; and

WHEREAS, the petitioner has assured the Commission that the project has been coordinated

with officials of the City of Laconia as well as the Bureau of Railroads (New Hampshire Department of Transportation); and

WHEREAS, any payments due for the use of said sewer facilities shall be subject to terms and conditions prescribed by the City of Laconia; and

WHEREAS, license granted under RSA 371:17 shall not preclude further actions by this Commission should subsequent proceedings determine the sewer plant in question is a public utility; and

WHEREAS, while the Commission finds this project in the public good, it feels affected persons must be offered the opportunity to respond in favor of, or in opposition to said petition; it is

ORDERED, that all persons desiring to respond to this petition be notified that they may submit their written comments or written request for hearing on this matter before this Commission no later than May 2, 1988; and it is

FURTHER ORDERED, that the petitioner effect said notice by publication once in a newspaper having general circulation in the affected area no later than April 27, 1988, and documented by an

affidavit to be made on a copy of this order and filed with this Commission on or before May 9, 1988; and it is

FURTHER ORDERED, *NISI* that South Down Highlands Limited Partnership be, and hereby is, authorized under RSA 371:17 et seq to construct, use, maintain, repair and reconstruct two 8" PVC sewer connector facilities on State-owned railroad property located at approximate Valuation Station 1640 + 10 and Valuation Station 1643 + 32 Map V21/67; and a 24" 4000D reinforced concrete storm drain, catch basin and outlet located at approximate Valuation Station 1643 + 25, also on Map V21/67; and it is

FURTHER ORDERED, that all construction meet requirements of Rist-Frost Drawings 1 through 8, Project 87-2406 as well as those of the Bureau of Railroads and the Division of Water Supply and Pollution Control; and it is

FURTHER ORDERED, that authority granted herein is 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 effective date.

By order of the Public Utilities Commission of New Hampshire this nineteenth day of April, 1988.

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NH.PUC*04/20/88*[51979]*73 NH PUC 186*Contel of New Hampshire, Inc.

[Go to End of 51979]

73 NH PUC 186

Re Contel of New Hampshire, Inc.

DR 88-047
Order No. 19,068

New Hampshire Public Utilities Commission

April 20, 1988

ORDER correcting telephone utility's tariff sheet.

RATES, § 309 — Service connection charges — Telephone — Tariff revision.

[N.H.] A telephone utility's tariff sheet was revised to correct a deletion that had inadvertently been removed from that tariff; it was found that the correction would result in increased consistency and clarity regarding service connection charges.

By the COMMISSION:

ORDER

WHEREAS, on March 21, 1988, Contel of New Hampshire, Inc. filed with this commission Section 12, Seventh Revised Sheet 4 of its P.U.C. — New Hampshire — No. 11 tariff with a proposed effective date of April 21, 1988; and

WHEREAS, the purpose of such filing is the correction by deletion of paragraph I. of Section II, which was inadvertently left in the prior revision of the tariff; and

WHEREAS, the above correction will result in increased consistency and clarity regarding service connection charges and is thus found to be in the public good; it is hereby

ORDERED, that Section 12, Seventh Revised Sheet 4 supersedes Section 12, Sixth Revised Sheet for Contel of New Hampshire's P.U.C. — New Hampshire — No. 11 tariff.

By order of the Public Utilities Commission of New Hampshire this twentieth day of April, 1988.

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NH.PUC*04/25/88*[51980]*73 NH PUC 187*New Hampshire Electric Cooperative, Inc.

[Go to End of 51980]

73 NH PUC 187

Re New Hampshire Electric Cooperative, Inc.

DE 87-220
Order No. 19,070

New Hampshire Public Utilities Commission

April 25, 1988

ORDER nisi authorizing placement of electric submarine cable.

ELECTRICITY, § 7 — Authorization for lines — Submarine cable.

[N.H.] A license was granted to an electric cooperative for the placement, operation and maintenance of an electric submarine cable beneath a lake in order to provide electric service to an island resident, provided that no hearing requests on the issue are received.

By the COMMISSION:

ORDER

WHEREAS, on November 19, 1987, the New Hampshire Electric Cooperative, Inc. filed with this commission, a petition pursuant to RSA 371:17 for a license to place, operate and maintain a 7.2 KV electric submarine cable under and across Lake Winnipesaukee between Pitchwood Island and Eagle Island in Meredith and Gilford, New Hampshire: and

WHEREAS, on March 29, 1988, this commission received updated and extended dredge and fill permits (Numbers B-1396 and B-1400) from the Wetlands Board, Department of Environmental Services, and on April 6, 1988, the commission received an amended copy of the permit No. B-1396; and

WHEREAS, pursuant to a request for electric service by a resident of Eagle Island, this commission in Docket DE 87-19 NHPUC Order No. 18,673 (72 NH PUC 174) ordered the company to provide service to the Island; and

WHEREAS, in accordance with company tariff, all necessary rights-of-way easements have been obtained and a financial agreement has been reached with the customer; and

WHEREAS, the required dredge and fill permits have been filed approving the submarine electric line from Pitchwood Island to Eagle Island in Lake Winnipesaukee; and

WHEREAS, this crossing will consist of one 1/0 15 KV submarine electric cable approximately 2,250 feet in length to be operated at 7,200 volts; and

WHEREAS, the granting of such license will not adversely affect the public rights on said water and is, therefore in the public interest; it is

WHEREAS, such license may be granted without hearing when all interested parties are in agreement pursuant to RSA 371:20; it is

ORDERED, *NISI* that the petition is hereby granted provided that all persons desiring to respond to this petition be notified that they may submit their written comments or written

request for hearing on this matter before this Commission no later than May 9, 1988; and it is

FURTHER ORDERED, that New Hampshire Electric Cooperative, Inc. effect said notification by publication of a 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 2, 1988 and documented by affidavit to be filed with this office on or before May 12, 1988; and it is;

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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 ten days from the date of publication 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-fifth day of April, 1988.

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NH.PUC*04/27/88*[51981]*73 NH PUC 188*EUA Power Corporation

[Go to End of 51981]

73 NH PUC 188

Re EUA Power Corporation

DF 87-234
Order No. 19,071

New Hampshire Public Utilities Commission

April 27, 1988

ORDER authorizing sale of securities.

SECURITY ISSUES, § 73 — Purposes and subjects of capitalization — Interest payments — Nuclear facility construction.

[N.H.] A corporation that was a utility under commission jurisdiction solely for the purpose of participating as a joint owner in the construction of the Seabrook nuclear plant and for the purpose of selling its share of the output of the plant for resale, was authorized to issue and sell Class A 25% cumulative preferred shares and $180 million Series B notes in exchange for outstanding Series notes secured under the first mortgage indenture, not exceeding $100 million of Series C notes to be used as payment of interest due on Series B and Series C notes; the financing was found to be in the public good because it allowed the company to maintain its investment without new funds from the market financing that would probably not be available at

the present time, and because it did not affect the allocation of risk between investors and ratepayers.

APPEARANCES: Richard B. Couser, Esquire and Alan Lefkovitz, Esquire, for EUA Power; Martin Rothfelder, Esquire, for the commission and staff.

By the COMMISSION:

REPORT

EUA Power Corporation (EUA Power or the "Company") is a utility under our jurisdiction solely for the purpose of participating as a joint owner in the construction of the Seabrook power plant and for the purpose of selling its share of the output of the plant for resale. On November 24, 1987, the Company filed a petition requesting authorization and approval from the commission for the issue and sale at private sale (i) for cash equal to the principal amount thereof, additional Class A 25% cumulative convertible preferred shares, $100 par value, to EUA in an aggregate amount not exceeding $20 million; and (ii) Series B Notes secured under and pursuant to the indenture as modified by the First Supplemental Indenture and Second Supplemental Indenture to be issued, in an aggregate principal amount not exceeding $80 million, the total additional capitalization not to exceed $100 million and to maintain the equity component of the capitalization of EUA Power at 25% of the debt component as required by an earlier Settlement Agreement among the interested parties before the Federal Energy Regulatory Commission (FERC). The interest rate, maturity and redemption

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provisions of the Series B Notes were to be determined by market conditions at the time of issuance. The proceeds of the sale of the securities were to be applied to the payment of interest on Series A and Series B secured notes, together with underwriting fees and other expenses attendant upon the sale of Series B Notes, and other expenses required for the funding of EUA Power's share of the cost of operating, maintaining, and protecting Seabrook Unit #1 and of continuing the regulatory process for obtaining an amendment(s) to the license permitting commercial operation of Unit 1, and of preserving and protecting the components and various warranties of, and dismantling, Seabrook Unit #2.

On March 10, 1988, EUA Power filed an amendment to its November 24, 1987 petition. The amendment increased the additional Class A 25% cumulative preferred shares, $100 par value, to be issued and sold at one time or from time to time to EUA in an aggregate amount up to but not exceeding to $25 million from $20 million. The Company also asked to be allowed to exchange Series B Notes secured under a Second Supplemental Indenture to be issued for the outstanding Series A Notes secured under the First Mortgage Indenture as modified by the First Supplemental Indenture, in an aggregate amount up to but not exceeding $180 million (the outstanding principal amount of Series A Notes now outstanding). Finally, EUA power added Series C Notes secured under said Indenture, as modified, to be used as payment of interest due on the Series B and Series C Notes, in an aggregate principal face amount up to but not exceeding $100 million. The total additional capital would not exceed $125 million so as to

maintain the equity component of the capitalization of EUA Power at 25% of its debt component, exclusive of any consideration of unappropriated retained earnings. The proposed exchange of Series B Notes for Series A Notes is not compulsory, but voluntary. Those holders of Series A Notes who do not accept the offer or exchange will retain the rights they have under the Series A Notes, the Indenture as modified and other applicable documents.

The Series B Notes will be identical to the Series A Notes with the following exceptions:

1. The Series B Notes will mature on May 15, 1993, but EUA Power may redeem the Notes at its option on and after November 15, 1991 for a period of six months upon payment of a premium of 0.50%, on or after May 15, 1992 for a period of six months upon payment of a premium of 0.25%, and on or after November 15, 1992 for a period of six months upon payment of a premium of 0.125%;

2. interest on Series B Notes at the option of EUA Power may be paid in cash or in Series C Notes in a principal amount not exceeding 133% of the cash otherwise payable;

3. each Series B Note will be issued with a “Contingent Interest Certificate” (CIC) which will entitle the holder thereof to the additional payment of interest (“Certificate”), whether or not the Series B Note to which such certificate was attached has been redeemed or retired as follows:

If in any fiscal year during each of the first four full fiscal years consisting of twelve full calendar months following the commercial operation

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date of Seabrook Unit No. 1 EUA Power has Income After Interest Charges (as defined in the Second Supplemental Indenture) in excess of an amount equal to dividend's payable to a rate of 17 1/2% per annum on Petitioner's Class A Preferred Stock outstanding during such fiscal year (the “Base Amount”), EUA Power will pay to each certificate holder as interest an amount equal to one-half of the amount by which EUA Power's Income After Interest Charges exceeds the Base Amount divided by 180,000, but in no event will the aggregate interest payment in any such fiscal year exceed one-half of the difference between an amount equal to the dividends that would be payable assuming, a rate of return of 25% per annum on Petitioner's Class A Preferred Stock outstanding during such fiscal year and the Base Amount.

If in any fiscal year after the first four full fiscal years following the commercial operation date of Seabrook Unit No. 1, any Class A Preferred Stock has not been converted into EUA Power's Common Stock and EUA Power has Income After Interest Charges in excess of the Base Amount, EUA Power will pay to each certificate holder an amount equal, to one-fourth of the amount by which EUA Power's Income After Interest Charges exceeds the Base Amount divided by 180,000, but in no event will the aggregate interest payment in any fiscal year exceed one-fourth of the difference between an amount equal to the dividends that would be payable assuming a rate of return of 25% per annum on EUA Power's Class A Preferred Stock outstanding during such fiscal year and the Base Amount.

The Series C Notes will mature on November 15, 1992 and otherwise will be substantially similar to the Series B Notes, except that no provision will be made for the optional redemption of Series C Notes and Series C Notes will not have a Contingent Interest Certificate attached.

The Series B and Series C Notes will be of equal rank to any Series A Notes remaining outstanding following the proposed exchange.

There will be no cash proceeds from the issuance of said Series B Notes or Series C Notes. Series B Notes will be issued in exchange for Series A Notes of equal principal amount; Series C Notes will be issued to pay interest on Series B and Series C Notes at EUA Power's option as such interest comes due. The cash proceeds from the sale of said preferred shares to EUA will be applied to the payment of expenses required for the funding of EUA Power's share of the cost of operating, maintaining and protecting Seabrook Unit I and of continuing the regulatory process for obtaining an amendment(s) to the license permitting commercial operation of Unit 1 and of preserving and protecting the components and various warranties of, and dismantling, Seabrook 2.

On April 19, 1988, John R. Stevens, Executive Vice-President of Eastern Utilities Associates (EUA), adopted the supplemental prepared direct testimony of Donald G. Pardus, President and a trustee of EUA. The witness testified that EUA Power has its interest in the Seabrook project as its only asset and due to the delay in the commercial operation of that project it is necessary to raise additional funds to meet interest payments on its present debt

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and to fund its share of the cost of maintaining Seabrook Unit 1 and continuing the regulatory process for an amendment(s) to the license permitting commercial operation of Unit 1. He further testified that the proposed financing was selected based upon the Company's cash requirements of $44 million to carry the project needed through the anticipated commencement of commercial operation of Seabrook Unit 1 by May 14, 1990 and the sale of electricity by EUA Power from that Unit. The cash would be realized from the sale of $25 million of new preferred stock to EUA and another $20 million from tax credits which are realized in the consolidated tax returns of the parent, EUA.

The original capitalization of EUA Power was established using an October 31, 1987 operation date for Seabrook Unit 1. The Company now believes that Seabrook Unit 1 will not commence commercial operation before 1989 at the earliest and that it is prudent to use a date in the third or fourth quarter of 1989. Based upon a December 31, 1989 commercial operation date, EUA Power estimates that the total investment in fixed plant will be $343 million, or $2,450 per KW.

The witness further testified that it became clear after Public Service Company of New Hampshire had filed for protection under the bankruptcy code that new cash would be extremely difficult to raise. Therefore, a new financing was formulated that would provide for a swap of Series B Notes for Series A Notes, with interest to be paid on the Series B Notes with newly issued Series C Notes. The interest rate on the new Series B Notes would be 133% of the 17 1/2% face value of the notes. The effective interest rate would be approximately 23%. The Company could cease paying in Series C Notes at any time Seabrook Unit 1 became operational and return to paying interest at 17 1/2%. The contingent interest certificates (CIC) was developed to address the concerns of the note holders that they needed to participate in future equity returns in order to accept the payment of interest in new Series C Notes.

Witness Stevens testified that there are several reasons that approval would be in the public good. The first reason was that it was in the interest of the shareholders of EUA to accept the higher risk in return for the higher potential returns than is usually earned by utilities, due in part to the risk and the leverage involved. It would be in the interest of the noteholders to be allowed to recoup their investment and to earn interest on their investment. Second, from the ratepayer's viewpoint, EUA Power's position is that it has no ratepayers and the capacity involved would be offered in a free market. It contends that its Seabrook involvement will not affect any existing consumer in New Hampshire or in Massachusetts, where its retail operations are. Finally, the witness states that EUA Power would be unable to support its share of the Seabrook project without approval of this financing, and the capacity could well be lost to all consumers of New England.

We accept the Company's analysis that there is at present no market for its share of Seabrook. Therefore we are not being asked to evaluate whether EUA and its investors and ratepayers would fare better or worse should EUA Power maintain or sell its Seabrook investment. This financing allows EUA Power to maintain its investment with no new funds from the market financing that would probably not be available at this time. We also note that the financing before us does not affect the allocation of risk between investors and

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ratepayers previously established in DF 85-338 and DF 85-351. Based on these factors we find that the instant financing is in the public good.

However, we note with some concern the lack of any real sensitivity or risk analysis regarding Seabrook on-line dates and costs per kilowatt. The Company has testified that it has limited its analysis to confirming that the cost per kilowatt ($2450) of what it considers to be its most likely case (commercial operation by December 1989) will be competitive in that market. It has not done any analysis to discover the cost per kilowatt or date of operation at which its Seabrook investment would no longer be marketable without some loss to its investors. Tr 40-41. We do not believe that limiting the analysis to December 31, 1989 and $2450, and to known or most likely market factors, best enables the Company to decide whether it can go forward or not, a decision it assures us it makes “continually”. Tr 49. Rather it should be analyzing a series of scenarios with a variety of kw costs, on-line dates and market conditions in order to evaluate which combinations of events produce marketable capacity at a full return to the investors, and which do not.

Based upon investigation and consideration of the evidence submitted, the commission is of the opinion that granting the petition will be consistent with the public good.

Our Order will issue accordingly.

ORDER

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

ORDERED, that pursuant to RSA 369:1-4, EUA Power Corporation be, and hereby is, authorized to issue and sell to EUA not more than 250,000 shares of Class A 25% Preferred Stock, $100 par value, at one time or from time to time, in an aggregate amount not exceeding

$25,000,000; and it is

FURTHER ORDERED, that EUA Power Corporation be, and hereby is, authorized to issue up to $180,000,000 in aggregate principal face amount of Series B Secured Notes in exchange for outstanding Series A Notes; and it is

FURTHER ORDERED, that EUA Power Corporation be, and hereby is, authorized to issue up to $100,000,000 of Series C. Secured Notes as payment of interest due on the Series B Notes and Series C. Notes; and it is

FURTHER ORDERED, that EUA Power Corporation be, and hereby is, authorized to issue up to 180,000 Contingent Interest Coupons, one of which will be issued with each $1,000 principal amount Series B Secured Note; and it is

FURTHER ORDERED, that the 250,000 shares of Class A 25% Preferred Stock may be offered upon terms providing for its eventual mandatory conversion on a share-for-share basis into shares of common stock, $.01 par value; and it is

FURTHER ORDERED, that on July first and January first in each year EUA Power Corporation shall file with this commission a detailed statement, duly sworn to by its treasurer, or assistant treasurer, showing the disposition of the proceeds of the securities being authorized until the expenditure of the whole of said proceeds shall have been fully accounted for.

By order of the Public Utilities Commission of New Hampshire this twenty-seventh day of April, 1988.

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NH.PUC*04/28/88*[51982]*73 NH PUC 193*Gas Service, Inc.

[Go to End of 51982]

73 NH PUC 193

Re Gas Service, Inc.

Additional petitioner: Nashua Corporation

DR 88-44
Order No. 19,072

New Hampshire Public Utilities Commission

April 28, 1988

ORDER approving a special contract for the sale of natural gas.

RATES, § 380 — Natural gas — Special contract rate — Local distribution company — Commission approval.

[N.H.] A special contract governing the terms and conditions under which a local distribution company 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 December 10, 1987, Gas Service, Inc. filed with this commission its Special Contract No. 48, said contract outlining the terms and conditions under which that company would sell natural gas to Nashua Corporation; and

WHEREAS, the commission finds that issuance of said contract as revised is in the public good; it is therefore

ORDERED, that Special Contract No. 48 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-eighth day of April, 1988.

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NH.PUC*04/28/88*[51983]*73 NH PUC 193*Gas Service, Inc.

[Go to End of 51983]

73 NH PUC 193

Re Gas Service, Inc.

Additional petitioner: Jarl Extrusions, Inc.

DR 88-45
Order No. 19,073

New Hampshire Public Utilities Commission

April 28, 1988

ORDER approving a special contract for the sale of natural gas.

RATES, § 380 — Natural gas — Special contract rate — Local distribution company — Commission approval.

[N.H.] A special contract governing the terms and conditions under which a local distributions company 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 March 16, 1988, Gas Service, Inc. filed with this commission its Special Contract No. 49, said contract outlining the terms and conditions under which that company would sell natural gas to Jarl Extrusions, Inc.; and

WHEREAS, the commission finds that issuance of said contract is in the public good; it is therefore

ORDERED, that Special Contract No. 49 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-eighth day of April, 1988.

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NH.PUC*04/29/88*[51984]*73 NH PUC 194*Keene Gas Corporation

[Go to End of 51984]

73 NH PUC 194

Re Keene Gas Corporation

DR 88-40
Order No. 19,075

New Hampshire Public Utilities Commission

April 29, 1988

ORDER approving revised cost of gas adjustment rate for a propane distribution company.

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1. AUTOMATIC ADJUSTMENT CLAUSES, § 52 — Cost of gas adjustment clause — Forecasted propane costs — Propane distributor.

[N.H.] A propane distribution company was authorized to implement a revised cost of gas adjustment rate; the revised rate was based on the company's forecast of the price of propane and was made subject to a trigger mechanism that would initiate reconsideration of the rate if it should result in overcollections. p. 194.

2. AUTOMATIC ADJUSTMENT CLAUSES, § 22 — Lost, unaccounted for, and company use gas — Propane distribution company.

[N.H.] A propane distribution company was directed to make efforts toward reducing its lost and unaccounted and company use gas and to report on those efforts in its next cost of gas adjustment rate filing. p. 195.

3. AUTOMATIC ADJUSTMENT CLAUSES, § 54 — Cost of gas adjustment clause — Over- and undercollections — Interest rate — Propane distributor.

[N.H.] A propane gas distribution company was directed to calculate interest on its cost of gas adjustment clause over- and undercollections using the prime rate as reported in the Wall Street Journal; the interest rate is to be adjusted each quarter using the rate reported on the first day of the month proceeding the first month of the quarter. p. 195.

APPEARANCES: John F. DiBernardo, Plant Operations Manager for Keene Gas Corporation; Daniel D. Lanning, Assistant Finance Director, George McCluskey, Utility Analyst for the Commission Staff and Larry Eckhaus, Utility Analyst, Office of the Consumer Advocate.

By the COMMISSION:

REPORT

On March 31, 1988, Keene Gas Corporation, (the Company), a public utility in the business of distributing gas within the State of New Hampshire, filed with this Commission certain revisions to its tariff providing for a 1988 Summer Cost of Gas Adjustment (CGA) for effect May 1, 1988. The filing requests a rate of $0.0496/therm, excluding the N.H. State Franchise Tax, a decrease from the rate of $0.0727/therm approved by the Commission for the 1987 summer period. The CGA is in addition to a base rate of $0.4335/therm making a total of $0.4831/therm Cost of Gas, excluding N.H. Franchise Tax for the 1988 summer period.

A duly noticed public hearing was held at the Commission's office in Concord, N.H. on April 20, 1988.

Areas covered through direct testimony of a company witness included projected sales forecasts, product procurement at lowest possible costs and adequate supplies on hand and/or available to meet customer requirements at any given time.

[1] Utility Analyst Larry Eckhaus, from the Consumer Advocate's Office, directed attention to the purchase of product at 29.55¢ per gallon in April 1988 and requested in his brief, Summer 1988 CGA be revised to this cost. It was pointed out by the Company witness John DiBernardo

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that this was a one time purchase from one supplier for delivery of approximately 150,000 gallons in April and May of 1988 F.O.B. seller's terminal. Freight costs of .0383¢ per gallon are added for Keene landed costs. The Witness also testified the 150,000 gallons is for use in utility and non-utility operations and is far short of the expected summer 1988 requirements, the balance of which would come from other suppliers with prices ranging from 32.5¢ to 33¢ per gallon F.O.B. seller's terminal. Based on this information we will allow the estimate proposed by Keene. We note that the CGA has a trigger mechanism and if the approved estimate begins to overcollect this trigger will initiate reconsideration of the CGA rate.

[2] Assistant Finance Director Daniel D. Lanning questioned company use and unaccounted for losses. The Witness testified that company use reflects gas used in operating the propane-air plant for city distribution and to run other company equipment. The Witness further averred that this is consistent with prior years, therefore, company use remains at the present level with very

little fluctuation. The Witness went on to testify that the Summer 1987 unaccounted for use was down to 6.5%, an annual reduction from a high of 13.7% reported in past years. The reductions are a result of installation of a Calorimeter for test use with 740 BTU propane-air, purchase of a flame ionization mobile leak detector unit, a phase-out program of all gas meters that are not temperature compensated and continuous surveillance of the system for leaks and malfunctions. Further loss reductions are expected when the remaining 20% non-temperature compensated meters are replaced.

Regarding lost and unaccounted for and company use, the Commission directs that these two items be separated in future CGA filings. The Commission believes that the Company has an obligation to make efforts toward reducing both the lost and unaccounted for and company use. These efforts shall be reported in the next CGA (winter 1988-89).

[3] Staff also questioned the continued use of 10% APR by the Company when calculating interest on CGA over/under collections. It was pointed out that the Commission has adopted the use of the prime rate reported daily in the “Wall Street Journal”. The present policy is to use the rate reported on the first day of the month preceding the first month of a quarter. (The rate quoted on the first of December, March, June and September is to be used for quarters starting January, April, July and October). The revised method tends to keep the rate at a current basis. The Witness felt the Company would have no problem with the revision.

Utility Analyst George McCluskey questioned the Witness about the proposed construction of the Champlain Pipeline project, a Natural Gas pipeline which plans to pass within 2 1/2 miles of Keene's gas plant. The Witness testified engineers of both Companies have met to discuss the advantages of adding natural gas to the area. The minimal expense for conversion of Keene's existing distribution system when/if natural gas is available was also discussed. It was, however, explained by the Witness that the project is only in the preliminary planning stage and there has been no agreements by either Company. The Witness did say Keene Gas believes it would be to their advantage if natural gas could be made available to them but it is not expected in the immediate future.

The projected costs, sales and adjustments to the CGA filing are consistent with those approved by the Commission in past CGA's. The Commission finds that

Keene Gas Corporation's CGA rate of $0.0496/therm is just and reasonable, therefore accepts such as filed.

Our Order will be issued accordingly.

ORDER

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

ORDERED, that 9th Revised Page 27, Superseding 8th Revised Page 27, of Keene Gas Corporation, Tariff, N.H.P.U.C. No. 1 - Gas, providing for a Cost of Gas Adjustment of $0.0496/therm for the period May 1, 1988 through October 31, 1988 be, and hereby is, approved; and it is

FURTHER ORDERED, that the revised tariff pages approved by this order become effective with all billings issued on or after May 1, 1988; and it is

FURTHER ORDERED, that public notice of this Cost of Gas Adjustment be given by one time publication in newspapers having general circulation in the territories served; and it is

FURTHER ORDERED, the above rate is to be adjusted by a factor of approximately 1% according to the utilities classification in the Franchise Tax Docket DR 83-205, Order No. 15,624; and it is

FURTHER ORDERED, that the over/under collection of the Keene Gas Adjustment will accrue interest at the Prime Rate reported in the "Wall Street Journal" effective November 1, 1988. The rate is to be adjusted each quarter using the rate reported on the first day of the month preceding the first month of a quarter.

By order of the Public Utilities Commission of New Hampshire this twenty-ninth day of April, 1988.

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NH.PUC*04/29/88*[51985]*73 NH PUC 196*Claremont Gas Corporation

[Go to End of 51985]

73 NH PUC 196

Re Claremont Gas Corporation

DR 88-41
Order No. 19,076

New Hampshire Public Utilities Commission

April 29, 1988

ORDER approving revised cost of gas adjustment rate for a propane distribution company.

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1. AUTOMATIC ADJUSTMENT CLAUSES, § 53 — Cost of gas adjustment clause — Corrections to over- and undercollections — Revised rates — Propane distributor.

[N.H.] A propane distribution company was authorized to implement a revised cost of gas adjustment rate; the revised rate was submitted to correct the company's calculation of over- and undercollection and related interest. p. 197.

2. AUTOMATIC ADJUSTMENT CLAUSES, § 22 — Lost and unaccounted for gas — Propane distribution company.

[N.H.] In the interest of minimizing lost and unaccounted for gas, a propane distribution company was directed to submit a report detailing its plans to phase-out its non-temperature compensated gas meters; the report must address the cost of installing suitable metering equipment to measure the send out from its storage facilities. p. 197.

3. AUTOMATIC ADJUSTMENT CLAUSES, § 32 — Cost of gas adjustment clause proceeding — Procurement practices — Purchases from affiliates — Propane distributor.

[N.H.] A propane distribution company was directed to address, in future cost of gas adjustment clause proceedings, the issue of whether its practice of purchasing propane from its parent corporation interferes with its ability to obtain supplies at competitive prices. p. 197.

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4. AUTOMATIC ADJUSTMENT CLAUSES, § 54 — Cost of gas adjustment clause — Over- and undercollections — Interest rate — Propane distributor.

[N.H.] A propane gas distribution company was directed to calculate interest on its cost of gas adjustment clause over- and undercollections using the prime rate as reported in the Wall Street Journal; the interest rate is to be adjusted each quarter using the rate reported on the first day of the month proceeding the first month of the quarter. p. 197.

APPEARANCES: Ransmeier and Spellman by Dom S. D'Ambruoso, Esquire; Larry Eckhaus for the Consumer Advocate's Office; Daniel Lanning, Assistant Finance Director and George McCluskey, Utility Analyst on behalf of the Commission Staff.

By the COMMISSION:

REPORT

On March 25, 1988 Claremont Gas Corporation (Claremont, 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 for a 1988 summer cost of gas adjustment (CGA) for effect May 1, 1988. That cost of gas adjustment was surcharge credit of $(.0814) per therm.

An Order of Notice was issued on March 22, 1988 setting the date of the hearing for April 20, 1988.

[1] On April 19, 1988, Claremont Gas Corporation submitted a revised CGA rate. The revised CGA was a surcharge of $.0246 per therm. This revision was submitted to correct the Company's calculation of over/under collection and the related interest.

During the hearing, April 20, 1988, Staff indicated that there were further discrepancies in the over/under collection and the related interest. Upon Staff's request the Commission directed Staff to work with the Company to eliminate said discrepancies. Subsequently Staff has informed the Commission that these discrepancies have been corrected and a revised tariff has been submitted by the Company.

Other issues discussed during the hearing were the lost and unaccounted for gas, company use gas, Company propane purchasing practices, and the interest rate used when calculating the over/under collections.

[2] On the issue of unaccounted for gas, the Commission directed the Company to detail its

plans to phase-out its non-temperature compensated gas meters. This report shall also address the cost of installing suitable metering equipment to measure the send out from its storage facilities.

[3] The Company's practice of purchasing propane from its parent caused Staff to question the Company's ability to obtain supplies at competitive prices. We will expect Claremont to provide, in future CGA filings, information which addresses this concern.

[4] Staff also questioned the continued use of 10% APR by the Company when calculating interest on CGA over/under collections. It was pointed out that the Commission has adopted the use of the Prime Rate reported daily in the *Wall Street Journal.* The present policy is to use the rate reported on the first day of the month preceding the first month of a quarter. (The rate quoted on the first of December, March, June and September is to be used for quarters starting January,

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April, July and October). The revised method tends to keep the rate at a current basis. The witness felt the Company would have no problem with the revision.

Finally, Staff raised the issue of the Champlain Pipeline and the potential for Claremont's utilization of natural gas. This Commission looks favorably on a possibly less expensive, dependable, alternative source of gas supply for utilities in the State of New Hampshire. We look forward to hearing from the Company on its progress concerning this issue.

Our order will issue accordingly.

ORDER

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

ORDERED, that 123rd Revised Page 12-2 of Claremont Gas Corporation NHPUC No. 9-Gas, issued April 19, 1988, providing for a cost of gas adjustment of $.0246 per therm be, and hereby is, rejected ; and it is

FURTHER ORDERED, that 123rd Revised Page 12-2 of Claremont Gas Corporation NHPUC No. 9-Gas, issued April 20, 1988, providing for a cost of gas adjustment of $.0545 per therm be, and hereby is, accepted effective May l, 1988 through October 30, 1988.

FURTHER ORDERED, that the over/under collection of the Claremont Gas Corporation Adjustment will accrue interest at the Prime Rate reported in the *Wall Street Journal* effective November 1, 1988. The rate is to be adjusted each quarter using the rate reported on the first day of the month preceding the first month of a quarter; and it is

FURTHER ORDERED, that public notice of this Cost of Gas Adjustment be given by one time publication in newspapers having general circulation in the territories served; and it is

FURTHER ORDERED, the above rate is to be adjusted by a factor of approximately 1% according to the utilities classification in the Franchise Tax Docket DR 83-205, Order No. 15,624.

By order of the Public Utilities Commission of New Hampshire this twenty-ninth day of April, 1988.

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NH.PUC*04/29/88*[51986]*73 NH PUC 198*Manchester Gas Company

[Go to End of 51986]

73 NH PUC 198

Re Manchester Gas Company

DR 88-36
Order No. 19,077

New Hampshire Public Utilities Commission

April 29, 1988

ORDER rejecting proposed revisions to the summer cost of gas adjustment tariff of a natural gas distribution company and directing the company to resubmit its proposed tariff with take-or-pay charges and propane storage charges removed.

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1. AUTOMATIC ADJUSTMENT CLAUSES, § 25 — Summer cost of gas adjustment clause — Indirect costs — Take-or-pay charges — Natural gas distribution company.

[N.H.] The commission rejected as premature a proposal by a natural gas distribution company to recover, through its cost of gas adjustment clause, prospective pipeline take-or-pay costs expected to be passed through to the company by its interstate pipeline supplier pursuant to Federal Energy Regulatory Commission Order No. 500. p. 201.

2. AUTOMATIC ADJUSTMENT CLAUSES, § 23 — Summer cost of gas adjustment clause — Indirect costs — Storage charges — Natural gas distribution company.

[N.H.] A natural gas distribution company

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was directed to remove all costs related to the storage of propane for winter customers from its summer cost of gas adjustment clause. p. 201.

3. AUTOMATIC ADJUSTMENT CLAUSES, § 54 — Cost of gas adjustment clause — Over- and undercollections — Interest rate — Natural gas distributor.

[N.H.] A natural gas distribution company was directed to calculate interest on its cost of gas adjustment clause over- and undercollections using the prime rate as reported in the Wall Street Journal; the interest rate is to be adjusted each quarter using the rate reported on the first day of the month proceeding the first month of the quarter. p. 201.

APPEARANCES: For Manchester Gas Company, David W. Marshall, Esquire of Orr & Reno;

Larry Eckhaus, Utility Analyst, for the Consumer Advocate's Office; Daniel Lanning Assistant Finance Director and George McCluskey, Utility Analyst for Staff.

By the COMMISSION:

REPORT

PROCEDURAL HISTORY

On March 31, 1988, Manchester Gas Company (the Company) a public utility engaged in the business of supplying gas in the State of New Hampshire, filed with this Commission revisions to its tariff 27th Revised Page 26, superseding 26th Revised page 26, NHPUC No. 13 — Gas, providing for a 1988 Summer Cost of Gas Adjustment (CGA) for effect May l, 1988. That cost of gas adjustment to be a credit surcharge of $(0.1493) per therm, net of the Franchise Tax.

An Order of Notice was issued setting the hearing date as of April 20, 1988 at the Commission's office in Concord. The hearing date was subsequently put back to April 21, 1988.

During the hearing the following issues were discussed: a) Unaccounted for and company use gas; b) Boundary Gas Company supplies; c) Spot gas purchases; d) The contract conversion option in FERC Orders 436 and 500; and e) The recovery of pipeline take-or-pay costs.

POSITION OF THE PARTIES

Take-Or-Pay Recovery

The only issue on which the parties differed significantly and which also had a material bearing on the outcome of the CGA was the question of pipeline take-or-pay cost recovery. The Company's witness Mr. Inglis began by reviewing the history of the take-or-pay problem. This review began with a description of the national gas shortages in the late 1970's and the subsequent acceptance by pipelines of stringent provisions, including take-or-pay clauses, in their contracts with gas producers.

The Witness went on to describe how the downturn in the natural gas market in the early to mid-1980's caused its only pipeline supplier, Tennessee Gas Pipeline (Tennessee), to incur take-or-pay liability totalling upwards of $3 billion. Negotiations between Tennessee and its suppliers designed to achieve a compromise position on this liability and the buy-out of the offending pricing provisions resulted in the a $1.3 billion cost to Tennessee.

On June 6, 1986 Tennessee filed a tariff with the FERC to recover its past take-or-pay and contract reformation costs (RP 86-119). Following extensive proceedings

and offers of settlement, the administrative law judge ruled that Tennessee's take-or-pay costs were recoverable and prudently incurred. On February 8, 1988 FERC accepted, in large part, Tennessee's unilateral offer of settlement. The settlement provided for an equal sharing of the past take-or-pay and contract betterment costs between Tennessee and its customers. Consequently, the settlement limits the expenses Tennessee can pass to customers at $650 million.

The Company's witness stated that the New England Customer Group (which represents

EnergyNorth Inc. in RP 86-119) has, along with other intervenors, filed motions for rehearing. At this time, FERC has yet to issue its final order in this case.

On March 23, 1988 Tennessee informed EnergyNorth Inc. (ENI) of its intention to file a Purchased Gas Adjustment (PGA) with FERC for effect July 1, 1988 with documentation supporting $500 million in payments for past take-or-pay and contract betterment costs. It was stated that Tennessee would bill 50% of these costs to its customers; that liability would be $250 million.

ENI's share of the $250 million is $1,052,250 made up of $195,500 for Concord Natural Gas Corp. and $856,750 for Gas Service Inc. and Manchester Gas Co. combined. ENI has proposed a one year recovery period with Concord Natural Gas Corp. recovering $44,225, Manchester Gas Co. $60,256 and Gas Service Inc. $135,836 during the 1988 summer period. The remaining take-or-pay costs plus interest will be included in the 1988/89 winter CGA filings.

Finally, the Company states that the reduction in Tennessee's gas rates over the last few years is due almost entirely to contract betterment resulting in savings totalling some $5 million. Thus, it argues that customers are already seeing the benefits of the settlements between the pipeline and producers.

Staff, on the other hand, argued through cross-examination that the options open to the New England Customer Group are not yet exhausted, even with an unfavorable final decision from the FERC. They could, for example, take the Tennessee take-or-pay case to a higher court and, with a stay of the FERC ruling, seriously delay if not alter the take-or-pay allocations. Alternatively, given the depth of opposition to the initial FERC decision, that Commission might reverse in part or full its position.

Staff also argued that the ENI's proposal in requesting full take-or-pay recovery did not follow the letter of the FERC Order 500 which, it claimed, was intended to form the basis of all pipeline take-or-pay settlements. In particular, Staff pointed to specific sections of Order 500 which call for an equitable sharing of take-or-pay costs among all segments of the industry including producers, pipeline, distributors and consumers.

In addition, Staff drew attention to a passage in Order 500 which appears to give commissions the regulatory authority to determine the method and extent of take-or-pay flow through by LDCs. In this respect Staff argued that the question of take-or-pay recovery should be determined in a separate docket rather than through CGA filings. Furthermore, such a procedure would allow Staff and other intervenors reasonable time for discovery and preparation of testimony.

The Consumer Advocate's Office took a position similar to that of Staff and called for: a) the removal of all take-or-pay costs from the Company's summer CGA filing and; b) for the Commission to consider the method and extent of recovery either in a generic docket or in the pending base rate

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proceeding of each utility. In support of this position the Consumer Advocate read into the record a motion on the take-or-pay issue. Staff supported this motion.

Opposing the Consumer Advocate's motion, Counsel for the Company argued that the take-or-pay costs reflected in the filing were no different from any other FERC approved cost and, therefore, should be flowed through to customers in the entirety. He went on to say that Staff and the Consumer Advocate had ample opportunity during the hearing to present their cases and that a separate docket would add nothing new to the record.

Supplemental Storage Charges

On cross-examination of Mrs. Huber by Staff, it was shown that for a number of years the Company had recovered some of the storage demand charges associated with supplemental gas facilities through its summer CGA. It is Staff's position that gas from these facilities is used only to meet the demands of winter peaking customers and, therefore, should be excluded from the summer CGA.

Over/Under Collections

Staff questioned the continued use of 10% APR by the Company when calculating interest on CGA over/under collections. It was pointed out that the Commission has adopted the use of the Prime Rate reported daily in the *Wall Street Journal.* The present policy is to use the rate reported on the first day of the month preceding the first month of a quarter. (The rate quoted on the first of December, March, June and September is to be used for quarters starting January, April, July and October). The revised method tends to keep the rate at a current basis. The Company witness felt there would be no problem with the revision.

COMMISSION ANALYSIS

"**[1-3]**" Based upon the evidence provided, the Commission finds that the proposal by the company to recover, via the summer CGA, prospective Tennessee Pipeline take-or-pay costs to be premature. Consequently, we will reject the CGA as filed and direct the Company to re-submit its tariff page with these costs removed. We also direct the Company to remove from its filing all storage demand charges associated with supplemental gas facilities.

Our order will issue accordingly.

ORDER

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

ORDERED, that 27th Revised Page 26, superseding 26th Revised Page 26, NHPUC No. 13 — Gas, providing for a 1988 Summer Cost of Gas Adjustment for effect May 1, 1988 is rejected, and it is

FURTHER ORDERED, that Manchester Gas Company resubmit its tariff page, and it is

FURTHER ORDERED, that costs related to RP 86-119 take or pay charges be removed from the Cost of Gas Adjustment, and it is

FURTHER ORDERED, that costs related to the storage of propane for winter customers be removed from the Summer Cost of Gas, and it is

FURTHER ORDERED, that the over/under collection will accrue interest at the Prime Rate reported in the *Wall Street Journal* effective November 1, 1988. The rate is to be adjusted each

quarter using the rate reported on the first day of the month preceding the first month of a quarter.

By order of the Public Utilities Commission of New Hampshire this twenty-ninth day of April, 1988.

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[Go to End of 51987]

73 NH PUC 202

Re Concord Natural Gas Corporation

DR 88-37
Order No. 19,078

New Hampshire Public Utilities Commission

April 29, 1988

ORDER rejecting proposed revisions to the summer cost of gas adjustment tariff of a natural gas distribution company and directing the company to resubmit its proposed tariff with take-or-pay charges removed.

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1. AUTOMATIC ADJUSTMENT CLAUSES, § 25 — Summer cost of gas adjustment clause — Indirect costs — Take-or-pay charges — Natural gas distribution company.

[N.H.] The commission rejected as premature a proposal by a natural gas distribution company to recover, through its cost of gas adjustment clause, prospective pipeline take-or-pay costs expected to be passed through to the company by its interstate pipeline supplier pursuant to Federal Energy Regulatory Commission Order No. 500. p. 204.

2. AUTOMATIC ADJUSTMENT CLAUSES, § 54 — Cost of gas adjustment clause — Over- and undercollections — Interest rate — Natural gas distributor.

[N.H.] A natural gas distribution company was directed to calculate interest on its cost of gas adjustment clause over- and undercollections using the prime rate as reported in the *Wall Street Journal;* the interest rate is to be adjusted each quarter using the rate reported on the first day of the month proceeding the first month of the quarter. p. 204.

APPEARANCES: For Concord Natural Gas Corporation, David W. Marshall; Larry Eckhaus, Utility Analyst, for the Consumer Advocate; Eugene F. Sullivan, Finance Director, Mary Jean

Newell, PUC Examiner, and George McCluskey, Utility Analyst for the Commission Staff.

By the COMMISSION:

REPORT

On March 31, 1988, Concord Natural Gas Corp. (CNG 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 1988 Summer Cost of Gas Adjustment (CGA) for effect May 1, 1988. This cost of gas adjustment was to be a surcharge credit of $(.1397) per therm.

An Order of Notice was issued setting the date of the hearing as of April 20, 1988 at the Commission offices in Concord, New Hampshire. The hearing date was subsequently put back to April 21, 1988.

During the hearing the following issues were discussed: a) Unaccounted for and company use gas; b) Boundary Gas Company supplies; c) Spot gas purchases; d) The contract conversion option in FERC Orders 436 and 500; and e) The recovery of pipeline take-or-pay costs.

POSITION OF THE PARTIES

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Take-Or-Pay Recovery

The only issue on which the parties differed significantly and which also had a material bearing on the outcome of the CGA was the question of pipeline take-or-pay cost recovery. The Company's witness Mr. Inglis began by reviewing the history of the take-or-pay problem. This review began with a description of the national gas shortages in the late 1970's and the subsequent acceptance by pipelines of stringent provisions, including take-or-pay clauses, in their contracts with gas producers.

The Witness went on to describe how the downturn in the natural gas market in the early to mid-1980's caused its only pipeline supplier, Tennessee Gas Pipeline (Tennessee), to incur take-or-pay liability totalling upwards of $3 billion. Negotiations between Tennessee and its suppliers designed to achieve a compromise position on this liability and the buy-out of the offending pricing provisions resulted in the a $1.3 billion cost to Tennessee.

On June 6, 1986 Tennessee filed a tariff with the FERC to recover its past take-or-pay and contract reformation costs (RP 86-119). Following extensive proceedings and offers of settlement, the administrative law judge ruled that Tennessee's take-or-pay costs were recoverable and prudently incurred. On February 8, 1988 FERC accepted, in large part, Tennessee's unilateral offer of settlement. The settlement provided for an equal sharing of the past take-or-pay and contract betterment costs between Tennessee and its customers. Consequently, the settlement limits the expenses Tennessee can pass to customers at $650 million.

The Company's witness stated that the New England Customer Group (which represents EnergyNorth Inc. in RP 86-119) has, along with other intervenors, filed motions for rehearing. At this time, FERC has yet to issue its final order in this case.

On March 23, 1988 Tennessee informed EnergyNorth Inc. (ENI) of its intention to file a Purchased Gas Adjustment (PGA) with FERC for effect July 1, 1988 with documentation supporting $500 million in payments for past take-or-pay and contract betterment costs. It was stated that Tennessee would bill 50% of these costs to its customers; that liability would be $250 million.

ENI's share of the $250 million is $1,052,250 made up of $195,500 for Concord Natural Gas Corp. and $856,750 for Gas Service Inc. and Manchester Gas Co. combined. ENI has proposed a one year recovery period with Concord Natural Gas Corp. recovering $44,225, Manchester Gas Co. $60,256 and Gas Service Inc. $135,836 during the 1988 summer period. The remaining take-or-pay costs plus interest will be included in the 1988/89 winter CGA filings.

Finally, the Company states that the reduction in Tennessee's gas rates over the last few years is due almost entirely to contract betterment resulting in savings totalling some $5 million. Thus, it argues that customers are already seeing the benefits of the settlements between the pipeline and producers.

Staff, on the other hand, argued through cross-examination that the options open to the New England Customer Group are not yet exhausted, even with an unfavorable final decision from the FERC. They could, for example, take the Tennessee take-or-pay case to a higher court and, with a stay of the FERC ruling, seriously delay if not alter the take-or-pay allocations. Alternatively, given the depth of opposition to the initial FERC decision, that Commission might reverse in part or full its position.

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Staff also argued that the ENI's proposal in requesting full take-or-pay recovery did not follow the letter of the FERC Order 500 which, it claimed, was intended to form the basis of all pipeline take-or-pay settlements. In particular, Staff pointed to specific sections of Order 500 which call for an equitable sharing of take-or-pay costs among all segments of the industry including producers, pipeline, distributors and consumers.

In addition, Staff drew attention to a passage in Order 500 which appears to give commissions the regulatory authority to determine the method and extent of take-or-pay flow through by LDCs. In this respect Staff argued that the question of take-or-pay recovery should be determined in a separate docket rather than through CGA filings. Furthermore, such a procedure would allow Staff and other intervenors reasonable time for discovery and preparation of testimony.

The Consumer Advocate's Office took a position similar to that of Staff and called for: a) the removal of all take-or-pay costs from the Company's summer CGA filing and; b) for the Commission to consider the method and extent of recovery either in a generic docket or in the pending base rate proceeding of each utility. In support of this position the Consumer Advocate read into the record a motion on the take-or-pay issue. Staff supported this motion.

Opposing the Consumer Advocate's motion, Counsel for the Company argued that the take-or-pay costs reflected in the filing were no different from any other FERC approved cost and, therefore, should be flowed through to customers in the entirety. He went on to say that

Staff and the Consumer Advocate had ample opportunity during the hearing to present their cases and that a separate docket would add nothing new to the record.

Over/Under Collections

Staff questioned the continued use of 10% APR by the Company when calculating interest on CGA over/under collections. It was pointed out that the Commission has adopted the use of the Prime Rate reported daily in the *Wall Street Journal.* The present policy is to use the rate reported on the first day of the month preceding the first month of a quarter. (The rate quoted on the first of December, March, June and September is to be used for quarters starting January, April, July and October). The revised method tends to keep the rate at a current basis. The Company witness felt there would be no problem with the revision.

COMMISSION ANALYSIS

"**[1,2]**" Based upon the evidence provided, the Commission finds that the proposal by the company to recover, via the summer CGA, prospective Tennessee Pipeline take-or-pay costs to be premature. Consequently, we will reject the CGA as filed and direct the Company to re-submit its tariff page with these costs removed.

Our order will issue accordingly.

ORDER

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

ORDERED, that 57th Revised Page 21, superseding 56th Revised Page 21, NHPUC No. 13 — Gas, providing for a 1988 Summer Cost of Gas Adjustment for effect May 1, 1988 is rejected, and it is

FURTHER ORDERED, that Concord Natural Gas Corporation resubmit its tariff page, and it is

FURTHER ORDERED, that costs

related to RP86-119 take or pay charges be removed from the Cost of Gas Adjustment, and it is

FURTHER ORDERED, that the over/under collection will accrue interest at the Prime Rate reported in the *Wall Street Journal* effective November 1, 1988. The rate is to be adjusted each quarter using the rate reported on the first day of the month preceding the first month of a quarter.

By order of the Public Utilities Commission of New Hampshire this twenty-ninth day of April, 1988.

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NH.PUC*04/29/88*[51988]*73 NH PUC 205*Gas Service, Inc.

[Go to End of 51988]

73 NH PUC 205

Re Gas Service, Inc.

DR 88-38
Order No. 19,079

New Hampshire Public Utilities Commission

April 29, 1988

ORDER rejecting proposed revisions to the summer cost of gas adjustment tariff of a natural gas distribution company and directing the company to resubmit its proposed tariff with take-or-pay charges and propane storage charges removed.

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1. AUTOMATIC ADJUSTMENT CLAUSES, § 25 — summer cost of gas adjustment clause — Indirect costs — Take-or-pay charges — Natural gas distribution company.

[N.H.] The commission rejected as premature a proposal by a natural gas distribution company to recover, through its cost of gas adjustment clause, prospective pipeline take-or-pay costs expected to be passed through to the company by its interstate pipeline supplier pursuant to Federal Energy Regulatory Commission Order No. 500. p. 208.

2. AUTOMATIC ADJUSTMENT CLAUSES, § 23 — Summer cost of gas adjustment clause — Indirect costs — Storage charges — Natural gas distribution company.

[N.H.] A natural gas distribution company was directed to remove all costs related to the storage of propane for winter customers from its summer cost of gas adjustment clause. p. 208.

3. AUTOMATIC ADJUSTMENT CLAUSES, § 54 — Cost of gas adjustment clause — Over- and undercollections — Interest rate — Natural gas distributor.

[N.H.] A natural gas distribution company was directed to calculate interest on its cost of gas adjustment clause over- and undercollections using the prime rate as reported in the Wall Street Journal; the interest rate is to be adjusted each quarter using the rate reported on the first day of the month proceeding the first month of the quarter. p. 208.

APPEARANCES: For Gas Service Inc. David W. Marshall, Esquire of Orr & Reno; Larry Eckhaus, Utility Analyst, for the Consumer Advocate's Office; Daniel Lanning, Assistant Finance Director and George McCluskey, Utility Analyst for Staff.

By the COMMISSION:

REPORT

PROCEDURAL HISTORY

On March 31, 1988, Gas Service Inc. (the Company) a public utility engaged in the business of supplying gas in the State of New Hampshire, filed with this Commission revisions to its tariff

1988 Summer Cost of Gas Adjustment (CGA) for effect May 1, 1988. That cost of gas adjustment to be a credit surcharge of $(0.1666) per therm, net of the Franchise Tax.

An Order of Notice was issued setting the hearing date as of April 20, 1988 at the Commission's office in Concord. The hearing date was subsequently put back to April 21, 1988.

During the hearing the following issues were discussed: a) Unaccounted for and company use gas; b) Boundary Gas Company supplies; c) Spot gas purchases; d) The contract conversion option in FERC Orders 436 and 500; and e) The recovery of pipeline take-or-pay costs.

POSITION OF THE PARTIES

Take-Or-Pay Recovery

The only issue on which the parties differed significantly and which also had a material bearing on the outcome of the CGA was the question of pipeline take-or-pay cost recovery. The Company's witness Mr. Inglis began by reviewing the history of the take-or-pay problem. This review began with a description of the national gas shortages in the late 1970's and the subsequent acceptance by pipelines of stringent provisions, including take-or-pay clauses, in their contracts with gas producers.

The Witness went on to describe how the downturn in the natural gas market in the early to mid-1980's caused its only pipeline supplier, Tennessee Gas Pipeline (Tennessee), to incur take-or-pay liability totalling upwards of $3 billion. Negotiations between Tennessee and its suppliers designed to achieve a compromise position on this liability and the buy-out of the offending pricing provisions resulted in a $1.3 billion cost to Tennessee.

On June 6, 1986 Tennessee filed a tariff with the FERC to recover its past take-or-pay and contract reformation costs (RP 86-119). Following extensive proceedings and offers of settlement, the administrative law judge ruled that Tennessee's take-or-pay costs were recoverable and prudently incurred. On February 8, 1988 FERC accepted, in large part, Tennessee's unilateral offer of settlement. The settlement provided for an equal sharing of the past take-or-pay and contract betterment costs between Tennessee and its customers. Consequently, the settlement limits the expenses Tennessee can pass to customers at $650 million.

The Company's witness stated that the New England Customer Group (which represents EnergyNorth Inc. in RP 86-119) has, along with other intervenors, filed motions for rehearing. At this time, FERC has yet to issue its final order in this case.

On March 23, 1988 Tennessee informed EnergyNorth Inc. (ENI) of its intention to file a Purchased Gas Adjustment (PGA) with FERC for effect July 1, 1988 with documentation supporting $500 million in payments for past take-or-pay and contract betterment costs. It was stated that Tennessee would bill 50% of these costs to its customers; that liability would be $250 million.

ENI's share of the $250 million is $1,052,250 made up of $195,500 for Concord Natural Gas

Corp. and $856,750 for Gas Service Inc. and Manchester Gas Co. combined. ENI has proposed a one year recovery period with Concord Natural Gas Corp. recovering $44,225, Manchester Gas Co. $60,256 and Gas Service Inc. $135,836 during the 1988 summer period. The remaining take-or-pay costs plus interest will be included in the 1988/89 winter CGA filings.

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Finally, the Company states that the reduction in Tennessee's gas rates over the last few years is due almost entirely to contract betterment resulting in savings totalling some $5 million. Thus, it argues that customers are already seeing the benefits of the settlements between the pipeline and producers.

Staff, on the other hand, argued through cross-examination that the options open to the New England Customer Group are not yet exhausted, even with an unfavorable final decision from the FERC. They could, for example, take the Tennessee take-or-pay case to a higher court and, with a stay of the FERC ruling, seriously delay if not alter the take-or-pay allocations. Alternatively, given the depth of opposition to the initial FERC decision, that Commission might reverse in part or full its position.

Staff also argued that the ENI's proposal in requesting full take-or-pay recovery did not follow the letter of the FERC Order 500 which, it claimed, was intended to form the basis of all pipeline take-or-pay settlements. In particular, Staff pointed to specific sections of Order 500 which call for an equitable sharing of take-or-pay costs among all segments of the industry including producers, pipeline, distributors and consumers.

In addition, Staff drew attention to a passage in Order 500 which appears to give commissions the regulatory authority to determine the method and extent of take-or-pay flow through by LDCs. In this respect Staff argued that the question of take-or-pay recovery should be determined in a separate docket rather than through CGA filings. Furthermore, such a procedure would allow Staff and other intervenors reasonable time for discovery and preparation of testimony.

The Consumer Advocate's Office took a position similar to that of Staff and called for: a) the removal of all take-or-pay costs from the Company's summer CGA filing and; b) for the Commission to consider the method and extent of recovery either in a generic docket or in the pending base rate proceeding of each utility. In support of this position the Consumer Advocate read into the record a motion on the take-or-pay issue. Staff supported this motion.

Opposing the Consumer Advocate's motion, Counsel for the Company argued that the take-or-pay costs reflected in the filing were no different from any other FERC approved cost and, therefore, should be flowed through to customers in the entirety. He went on to say that Staff and the Consumer Advocate had ample opportunity during the hearing to present their cases and that a separate docket would add nothing new to the record.

Supplemental Storage Charges

On cross-examination of Mrs. Huber by Staff, it was shown that for a number of years the Company had recovered some of the storage demand charges associated with supplemental gas facilities through its summer CGA. It is Staff's position that gas from these facilities is used only

to meet the demands of winter peaking customers and, therefore, should be excluded from the summer CGA.

Over/Under Collections

Staff questioned the continued use of 10% APR by the Company when calculating interest on CGA over/under collections. It was pointed out that the Commission has adopted the use of the Prime Rate reported daily in the *Wall Street Journal.* The present policy is to use the rate reported on the first day of the month preceding the first month of a quarter. (The

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rate quoted on the first of December, March, June and September is to be used for quarters starting January, April, July and October). The revised method tends to keep the rate at a current basis. The Company witness felt there would be no problem with the revision.

COMMISSION ANALYSIS

[1-3] Based upon the evidence provided, the Commission finds that the proposal by the company to recover, via the summer CGA, prospective Tennessee Pipeline take-or-pay costs to be premature. Consequently, we will reject the CGA as filed and direct the Company to re-submit its tariff page with these costs removed. We also direct the Company to remove from its filing all storage demand charges associated with supplemental gas facilities.

Our order will issue accordingly.

ORDER

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

ORDERED, that 23rd Revised Page 1, superseding 22nd Revised Page 1, NHPUC No. 6 — Gas, providing for a 1988 Summer Cost of Gas Adjustment for effect May 1, 1988 is rejected; and it is

FURTHER ORDERED, that Gas Service Inc. resubmit its tariff page, and it is

FURTHER ORDERED, that costs related to RP86-119 take or pay charges be removed from the Cost of Gas Adjustment, and it is

FURTHER ORDERED, that costs related to the storage of propane for winter customers be removed from the Summer Cost of Gas, and it is

FURTHER ORDERED, that the over/under collection will accrue interest at the Prime Rate reported in the *Wall Street Journal* effective November 1, 1988. The rate is to be adjusted each quarter using the rate reported on the first day of the month preceding the first month of a quarter.

By order of the Public Utilities Commission of New Hampshire this twenty-ninth day of April, 1988.

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NH.PUC*05/02/88*[51989]*73 NH PUC 208*Manchester Gas Company

[Go to End of 51989]

73 NH PUC 208

Re Manchester Gas Company

DR 88-36
Supplemental Order No. 19,080

New Hampshire Public Utilities Commission

May 2, 1988

ORDER accepting revised summer cost of gas adjustment rate.

AUTOMATIC ADJUSTMENT CLAUSES, § 6 — Summer cost of gas adjustment clause — Natural gas distribution company.

[N.H.] A natural gas distribution company was authorized to implement a revised summer cost of gas adjustment rate; the rate was made subject to adjustment according to the company's classification in the Franchise Tax Docket, DR 83-205, Order No. 15,624, and the company was required to inform the public of the revised rate through publication in newspapers having general circulation in the territories served.

By the COMMISSION:

SUPPLEMENTAL ORDER

ORDERED, that 28th Revised Page 1,

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issued in lieu of 27th Revised Page 26, NHPUC No. 13 — Gas, providing for a 1988 Summer Cost of Gas Adjustment of $(0.1601) per therm, be and hereby is, accepted effective May 1, 1988 through October 31, 1988; and it is

FURTHER ORDERED, that public notice of this Cost of Gas Adjustment be given by one time publication in newspapers having general circulation in the territories served; and it is

FURTHER ORDERED, that the above rate is to be adjusted by a factor of approximately 1% according to the utilities classification in the Franchise Tax Docket DR 83-205, Order No. 15,624.

By order of the Public Utilities Commission of New Hampshire this second day of May, 1988.

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[Go to End of 51990]

73 NH PUC 209

Re Concord Natural Gas Corporation

DR 88-37
Supplemental Order No. 19,081

New Hampshire Public Utilities Commission

May 2, 1988

ORDER accepting revised summer cost of gas adjustment rate.

AUTOMATIC ADJUSTMENT CLAUSES, § 6 — Summer cost of gas adjustment clause — Natural gas distribution company.

[N.H.] A natural gas distribution company was authorized to implement a revised summer cost of gas adjustment rate; the rate was made subject to adjustment according to the company's classification in the Franchise Tax Docket, DR 83-205, Order No. 15,624, and the company was required to inform the public of the revised rate through publication in newspapers having general circulation in the territories served.

By the COMMISSION:

SUPPLEMENTAL ORDER

ORDERED, that 58th Revised Page 1, issued in lieu of 57th Revised Page 21, NHPUC No. 13 — Gas, providing for a 1988 Summer Cost of Gas Adjustment of $(0.1517) per therm, be and hereby is, accepted effective May 1, 1988 through October 31, 1988; and it is

FURTHER ORDERED, that public notice of this Cost of Gas Adjustment be given by one time publication in newspapers having general circulation in the territories served; and it is

FURTHER ORDERED, that the above rate is to be adjusted by a factor of approximately 1% according to the utilities classification in the Franchise Tax Docket DR 83-205, Order No. 15,624.

By order of the Public Utilities Commission of New Hampshire this second day of May, 1988.

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[Go to End of 51991]

73 NH PUC 209

Re Gas Service, Inc.

DR 88-38
Supplemental Order No. 19,082

New Hampshire Public Utilities Commission

May 2, 1988

ORDER accepting revised summer cost of gas adjustment rate.

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AUTOMATIC ADJUSTMENT CLAUSES, § 6 — Summer cost of gas adjustment clause — Natural gas distribution company.

[N.H.] A natural gas distribution company was authorized to implement a revised summer cost of gas adjustment rate; the rate was made subject to adjustment according to the company's classification in the Franchise Tax Docket, DR 83-205, Order No. 15,624, and the company was required to inform the public of the revised rate through publication in newspapers having general circulation in the territories served.

By the COMMISSION:

SUPPLEMENTAL ORDER

ORDERED, that 24th Revised Page 1, issued in lieu of 23rd Revised Page 1, NHPUC No. 6 — Gas, providing for a 1988 Summer Cost of Gas Adjustment of $(0.1809) per therm, be and hereby is, accepted effective May 1, 1988 through October 31, 1988; and it is

FURTHER ORDERED, that public notice of this Cost of Gas Adjustment be given by one time publication in newspapers having general circulation in the territories served; and it is

FURTHER ORDERED, that the above rate is to be adjusted by a factor of approximately 1% according to the utilities classification in the Franchise Tax Docket DR 83-205, Order No. 15,624.

By order of the Public Utilities Commission of New Hampshire this second day of May, 1988.

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NH.PUC*05/02/88*[51992]*73 NH PUC 210*Granite State Electric Company

[Go to End of 51992]

73 NH PUC 210

Re Granite State Electric Company

DR 88-57
Order No. 19,083

New Hampshire Public Utilities Commission

May 2, 1988

ORDER authorizing an electric utility to implement a rate refund.

NUCLEAR PLANT DECOMMISSIONING, § 25 — Financing — Income tax effects — Refunded tax amounts — Electric utility.

[N.H.] An electric utility was authorized to implement a rate refund where (1) the refund reflected a finding by the Internal Revenue Service that revenues received by the Yankee Companies to recover decommissioning expenses were excludable from taxable income, and (2) the utility's major supplier had received refunded tax amounts (which had been previously paid to the Yankee Companies for decommissioning revenues) and had subsequently refunded that amount to the utility.

By the COMMISSION:

ORDER

WHEREAS, on March 31, 1988, Granite State Electric Company, a public utility providing electric service within the State of New Hampshire filed a proposed refund to its customers in the amount of $46,802; and

WHEREAS, said refund reflects a finding by the Internal Revenue that revenues received by Vermont Nuclear Power Corporation and the Yankee Atomic Electric Company (collectively referred to as the Yankee Companies) to recover decommissioning expenses are excludable from taxable income; and

WHEREAS, New England Power

Company, Granite State Electric Company's major supplier of power, has received the refunded tax amounts, previously paid to the Yankee Companies for decommissioning revenues, and has subsequently refunded said amount, plus interest, to Granite State Electric Company; it is therefore

ORDERED, that Granite State Electric Company's requested refund of $46,802 ($.00053 per

KWH) be, and hereby is, approved; and it is

FURTHER ORDERED, that Granite State Electric Company file tariff pages reflecting the above approved rate adjusted to include the State Franchise Tax in accordance with DR 83-205, Order No. 15,624.

By order of the Public Utilities Commission of New Hampshire this second day of May, 1988.

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NH.PUC*05/02/88*[51993]*73 NH PUC 211*Northern Utilities, Inc.

[Go to End of 51993]

73 NH PUC 211

Re Northern Utilities, Inc.

DR 88-39
Order No. 19,084

New Hampshire Public Utilities Commission

May, 2, 1988

ORDER approving revisions to the summer cost of gas adjustment tariff of a natural gas distribution company.

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1. AUTOMATIC ADJUSTMENT CLAUSES, § 54 — Cost of gas adjustment clause — Over- and undercollections — Interest rate — Natural gas distributor.

[N.H.] A natural gas distribution company was directed to calculate interest on its cost of gas adjustment clause over- and undercollections using the prime rate as reported in the *Wall Street Journal;* the interest rate is to be adjusted each quarter using the rate reported on the first day of the month proceeding the first month of the quarter. p. 212.

2. AUTOMATIC ADJUSTMENT CLAUSES, § 22 — Cost of gas adjustment clause — Lost, unaccounted for, and company use gas — Natural gas distributor.

[N.H.] A natural gas distribution company was directed to separate lost and unaccounted for gas from company use gas in future cost of gas adjustment (CGA) rate filings; moreover, the company was instructed that it had an obligation to make efforts toward reducing both lost and unaccounted for and company use gas and was directed to report on those efforts in its next CGA proceeding. p. 212.

APPEARANCES: LeBoeuf, Lamb & Leiby & MacRae by Elias G. Farrah, Esquire for Northern Utilities, Inc.; Larry Eckhaus, Esquire for the Consumer Advocate; Eugene F. Sullivan, Mary Jean Newell and George McCluskey for the Commission Staff.

By the COMMISSION:

REPORT

On March 31, 1988, 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 1988 Summer Cost of Gas Adjustment (CGA) for effect May 1, 1988. This cost of gas adjustment was to be a surcharge credit of $(.2693) per therm.

An Order of Notice was issued setting the date of the hearing as of April 25, 1988 at the Commission offices in Concord, New Hampshire.

Commissioner Ellsworth notified the

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Company at the beginning of the proceeding that an Order of Notice had been issued opening a docket to investigate take or pay recovery.

During the hearing the following issues were discussed: Pipeline Demand period covered; Order 473 Surcharge; Order 500, Take or Pay; lost and unaccounted for and company use; Interest rate used to calculate over/under collection.

The pipeline demand charges cover the period May 1 through August 31, 1988. The months of September and October are being deferred to the winter period in order to provide better seasonal cost messages.

Order 473 relates to compressor fuel charges. As utilities are going to be billed by suppliers monthly for both summer and winter costs, the Company has identified these costs and is applying them to the respective periods. The Company has added a surcharge to the CGA filing to recover these costs. The calculation was prepared incorrectly and the Company advised that it would make the necessary adjustment and refile the CGA.

"**[1, 2]**" Staff also questioned the continued use of 10% APR by the Company when calculating interest on CGA over/under collections. It was pointed out that the Commission has adopted the use of the Prime Rate reported daily in the *Wall Street Journal.* The present policy is to use the rate reported on the first day of the month preceding the first month of a quarter. (The rate quoted on the first of December, March, June and September is to be used for quarters starting January, April, July and October). The revised method tends to keep the rate at a current basis. The witness felt the Company would have no problem with the revision.

Regarding lost and unaccounted for and company use, the Commission directs that these two items be separated in future CGA filings. The Company has an obligation to make efforts toward reducing both the lost and unaccounted for and company use. These efforts should be reported in the next CGA (winter 1988-89).

Our order will issue accordingly.

ORDER

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

ORDERED, that Ninth Revised Page 24 issued March 31, 1988, providing for a cost of gas adjustment of $(.2693) per therm be, and hereby is rejected; and it is

FURTHER ORDERED, that Tenth Revised Page 24 received April 28, 1988, providing for a cost of gas adjustment of $(0.2706) per therm be, and hereby is, approved; and it is

FURTHER ORDERED, that the over/under collection of the Northern Utilities, Inc. Adjustment will accrue interest at the Prime Rate reported in the *Wall Street Journal* effective November 1, 1988. The rate is to be adjusted each quarter using that rate reported on the first day of the month preceding the first month of a quarter; and it is

FURTHER ORDERED, that public notice of this Cost of Gas Adjustment be given by one time publication in newspapers having general circulation in the territories served; and it is

FURTHER ORDERED, the above rate is to be adjusted by a factor of approximately 1% according to the utilities classification in the Franchise Tax Docket DR 83-205, Order No. 15,624.

By order of the Public Utilities Commission of New Hampshire this second day of May, 1988.

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NH.PUC*05/02/88*[51994]*73 NH PUC 213*Petrolane-Southern New Hampshire Gas Company, Inc.

[Go to End of 51994]

73 NH PUC 213

Re Petrolane-Southern New Hampshire Gas Company, Inc.

DR 88-42
Order No. 19,085

New Hampshire Public Utilities Commission

May, 2, 1988

ORDER approving revisions to the summer cost of gas adjustment tariff of a propane gas distributor.

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1. AUTOMATIC ADJUSTMENT CLAUSES, § 32 — Cost of gas adjustment clause — Procurement practices — Effect of forgone discounts — Propane distributor.

[N.H.] In an order approving revisions to the summer cost of gas adjustment rate of a propane distribution company, the commission reaffirmed its policy of requiring utilities to take advantage of all discounts offered by vendors; the company was put on notice that in the future forgone discounts will be credited to its cost of gas adjustment clause regardless of its payment

policy and that it would bear the burden of proving that other action is necessary. p. 214.

2. AUTOMATIC ADJUSTMENT CLAUSES, § 22 — Cost of gas adjustment clause — Lost, unaccounted for, and company use gas — Propane distributor.

[N.H.] A propane distribution company was directed to separate lost and unaccounted for gas from company use gas in future cost of gas adjustment (CGA) rate filings; moreover, the company was instructed that it had an obligation to make efforts toward reducing both lost and unaccounted for and company use gas and was directed to report on those efforts in its next CGA proceeding. p. 214.

3. AUTOMATIC ADJUSTMENT CLAUSES, § 54 — Cost of gas adjustment clause — Over- and undercollections — Interest rate — Propane distributor.

[N.H.] A propane distribution company was directed to calculate interest on its cost of gas adjustment clause over- and undercollections using the prime rate as reported in the *Wall Street Journal;* the interest rate is to be adjusted each quarter using the rate reported on the first day of the month proceeding the first month of the quarter. p. 214.

APPEARANCES: Ransmeier and Spellman by Dom S. D'Ambruoso, Esquire; Larry Eckhaus for the Consumer Advocate's Office; Daniel Lanning, Assistant Finance Director and George McCluskey, Utility Analyst on behalf of the Commission Staff.

By the COMMISSION:

REPORT

On April 15, 1988 Petrolane-Southern New Hampshire Gas Company, Inc. (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, said revision provides for the 1988 Summer Cost of Gas Adjustment (CGA) effective May 1, 1988. The revised filing requests a CGA rate of $0.1672 per therm excluding the state franchise tax.

A duly noticed hearing was held at the Commission's office in Concord, New Hampshire on April 20, 1988. During the proceedings a Company witness discussed the elements found in the proposed CGA.

Areas covered through direct testimony and cross examination included cost estimates, discounts, lost and unaccounted for,

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company use, the interest used to calculate the over/under collections and the Champlain Pipeline.

[1-3] During the hearing the Consumer Advocate questioned the Company on its policy for utilizing discounts offered by propane suppliers. The Company indicated that traditionally they have missed taking discounts due to their payment policies. The Commission will reaffirm its past precedent which mandates utilities to take advantage of all discounts offered by vendors. Future forgone discounts will be credited to the CGA regardless of Company's payment policy.

It will then be the Company's burden to prove other action is necessary.

Regarding lost and unaccounted for and company use, the Commission directs that these two items be separated in future CGA filings. The Company has an obligation to make efforts toward reducing both the lost and unaccounted for and company use. These efforts should be reported in the next CGA (winter 1988-89).

Mr. Lanning questioned the continued use of 10% APR by the Company when calculating CGA over/under collections. He pointed out the Commission has adopted the use of the Prime Rate reported daily in the *Wall Street Journal.* The present policy is to use the rate reported on the first day of the month preceding the first month of a quarter. (The rate quoted on the first of December, March, June and September is to be used for quarters starting January, April, July and October). The revised method tends to keep the rate at a current basis. The witness felt the Company would have no problem with the revision.

Finally, Staff Utility Analyst McCluskey brought out the issue of the Champlain Pipeline and the potential for Petrolane-Southern's utilization of natural gas. This Commission looks favorably on a potentially less expensive, dependable alternative source of gas supply for utilities in the State of New Hampshire. We look forward to hearing from the Company on its progress concerning this issue.

On April 27, 1988, the Company submitted further revised CGA tariff pages. The revised tariff pages reflect adjustments to the calculations of the over/under collection and related interest. A CGA rate of $0.1644 per therm excluding the state franchise tax was requested.

Based on the evidence provided, the Commission finds a CGA rate of $0.1942/therm to be just and reasonable.

Our order will issue accordingly.

ORDER

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

ORDERED, that the 138th Revised page 15 of Petrolane-Southern New Hampshire Gas Company, Inc., tariff NHPUC, issued February 24, 1988, providing for a cost of gas adjustment of $0.0672 per therm for the period of May 1, 1988 through October 31, 1988 be, and hereby is, rejected; and it is

FURTHER ORDERED, that 138th Revised Page 15 of Petrolane-Southern New Hampshire Gas Company, Inc., tariff NHPUC, issued April 27, 1988, providing for a cost of gas adjustment of $0.1644 per therm for the period May 1, 1988 through October 31, 1988 be, and hereby is, rejected; and it is

FURTHER ORDERED, that Petrolane-Southern New Hampshire submit a Revised Tariff Page 15 providing for a cost of gas adjustment of $0.1942 per therm to become effective with all billings on or after May 1, 1988; and it is

FURTHER ORDERED, that the over/under collection of the Petrolane-Southern New Hampshire Gas Company, Inc. Adjustment will accrue interest at the Prime Rate reported in the

Wall Street Journal effective November 1, 1988. The rate is to be adjusted each quarter using the rate reported on the first day of the month preceding the first month of a quarter; and it is

FURTHER ORDERED, that public notice of this Cost of Gas Adjustment be given by one time publication in newspapers having general circulation in the territories served; and it is

FURTHER ORDERED, the above rate is to be adjusted by a factor of approximately 1% according to the utilities classification in the Franchise Tax Docket DR 83-205, Order No. 15,624.

By order of the Public Utilities Commission of New Hampshire this second day of May, 1988.

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NH.PUC*05/03/88*[51995]*73 NH PUC 215*Northern Utilities

[Go to End of 51995]

73 NH PUC 215

Re Northern Utilities

Additional petitioners: Elliot and Williams Roses

DR 88-60
Order No. 19,086

New Hampshire Public Utilities Commission

May 3, 1988

ORDER approving a special contract for the sale of natural gas.

RATES, § 381 — Natural gas — Special contract rate — Competitive fuels — Local distribution company.

[N.H.] The commission approved a special contract under which a local distribution company would be permitted to sell interruptible natural gas at a price below the cost of alternative fuels, so long as the price exceeded the weighted average price of pipeline gas by at least $.10 per therm; it was found that the contract would enhance the competitiveness of interruptible gas while not disadvantaging firm customers.

By the COMMISSION:

ORDER

WHEREAS, on April 11, 1988, Northern Utilities, Inc. filed with this commission its Special Contract No. 73, said contract outlining the terms and conditions under which that company would sell natural gas to Elliot & Williams Roses; and

WHEREAS, the commission finds that the said contract differs significantly from interruptible contracts previously filed by the company with this commission; and

WHEREAS, the late filing of said contract prevents full and detailed consideration by the commission in the timescale requested by the company; and

WHEREAS, it has been demonstrated in filings of other jurisdictional companies that the application of an adjustment factor to the alternative fuel posted price can enhance the competitiveness of interruptible gas while at the same time not disadvantaging firm customers; it is hereby

ORDERED, that Special Contract No. 73 is not approved; and it is

FURTHER ORDERED, that pending investigation by the commission of the proposed new contractual provisions, the company submit a revised contract following the same general format as used in Special Contract No. 72; and it is

FURTHER ORDERED, that the

company be authorized to set the interruptible price in all approved contracts below the alternative fuel posted price provided the resulting interruptible price exceeds the company's weighted average cost of pipeline gas by at least $.10/therm; and it is

FURTHER ORDERED, that the company report to the commission at the beginning of each month the actual prices charged each customer during the preceding month and the respective alternative fuel posted prices.

By order of the Public Utilities Commission of New Hampshire this third day of May, 1988.

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NH.PUC*05/09/88*[51997]*73 NH PUC 216*New England Power Company

[Go to End of 51997]

73 NH PUC 216

Re New England Power Company

DF 88-31
Order No. 19,090

New Hampshire Public Utilities Commission

May 9, 1988

ORDER authorizing an electric utility to issue bonds and enter loan agreements for the purpose of financing pollution control equipment.

SECURITY ISSUES, § 58 — Additions and betterments — Pollution control equipment — Electric utility.

[N.H.] An electric utility was authorized to finance pollution control equipment associated with the Seabrook unit 1 nuclear generating

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station through the issuance of general and refunding mortgage bonds and first mortgage bonds and through the execution of loan agreements with the Industrial Development Authority of the State of New Hampshire — a public agency empowered to issue pollution control revenue bonds.

APPEARANCES: Robert King Wulff, Esquire and Mark V. Tremallo, Esquire, for New England Power Company; Eugene F. Sullivan, Finance Director and Sarah P. Voll, Chief Economist for the commission staff.

By the COMMISSION:

REPORT

New England Power Company (the "Company" or "NEP"), is a utility subject to our jurisdiction. On February 29, 1988, the Company filed a petition requesting authorization and approval from the commission for the issue and sale of not exceeding $50,000,000 aggregate principal amount of the Company's General and Refunding Mortgage Bonds ("New G&R Bonds") in aggregate principal amount equal to the aggregate principal amount of the New G&R Bonds issued. The Company also requests authorization and approval of the commission for the execution of one or more loan agreements or supplemental loan agreements with the Industrial Development Authority of the State of New Hampshire ("NHIDA"), a public agency empowered to issue pollution control revenue bonds ("PCRBs") on behalf of enterprises such as the Company.

A public hearing was held on the petition on April 12, 1988.

The Company presented one witness, Robert H. McLaren, Assistant Treasurer, who testified as to the terms and conditions of the proposed financings. The Company also presented three exhibits: NEP-1, the prefiled testimony of Robert H. McLaren; and NEP-2 and NEP-2a, the Company's prefiled financial statements.

The Company's financial statements provided the basis of testimony relating to the Company's capitalization. They indicate that as of December 31, 1987, the Company's outstanding common stock totaled $128,997,920, represented by 6,449,896 shares outstanding having a par value of $20 per share. Premiums on capital amounted to $86,891,450. Other paid in capital was $288,000,000. Retained earnings were $323,262,802 and unappropriated undistributed subsidiary earnings were $10,553,221. The Company has 860,280 shares of preferred stock outstanding which were composed of two classes: 6 percent cumulative preferred

stock having a par value of $100, of which one series is outstanding; and dividend series preferred stock, also having a par value of $100, of which seven series are outstanding with dividend rates ranging from 4.56 percent to 8.68 percent. The combined aggregate par value of the Company's preferred stock was $86,028,000. Long-term debt outstanding, net of unamortized premiums and discounts, amounted to $726,491,993, consisting of twelve issues of First Mortgage Bonds and twelve issues of General and Refunding Mortgage bonds (“G&R Bonds”) with interest rates ranging from 4 percent to 16-5/8 percent and with maturity dates from 1988 to 2016. Not shown in the capitalization is $496,491,000 of pledged First Mortgage Bonds held by the Trustee for the G&R Bonds.

The Company reported that as of December 31, 1987 its utility plant was $1,906,163,441. Construction work in

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progress was shown to be $547,221,885, for a total utility plant of $2,453,385,326. The accumulated depreciation reserve against such property amounted to $561,555,545. In addition, the Company reported its investment in nuclear fuel as $45,206,227 for a net utility plant of $1,937,036,008. Other property and investments, of which a majority was authorized investments in securities of nuclear generating companies was shown as $45,709,031.

Under the Company's proposal, New G&R Bonds would be issued under and pursuant to the terms of the Company's General and Refunding Mortgage Indenture and Deed of Trust dated January 1, 1977, as amended and supplemented (“G&R Indenture”). The New G&R Bonds will have a lien subordinate to the Company's First Mortgage Bonds, and will mature in not more than 30 years. The exact maturity date will be fixed before the issue. Only fully registered bonds will be issued. All of the New G&R Bonds will be issued in connection with the issue of PCRBs.

Mr. McLaren testified that the New G&R Bonds would be issued to support the issuance of PCRBs to finance permanently up to $50,000,000 of expenditures related to pollution control equipment associated with the Company's ownership share of certain facilities that have been constructed at the Seabrook 1 nuclear generating station. Any PCRBs issued on the Company's behalf would be issued by NHIDA. The PCRBs would be sold to the public pursuant to negotiated underwriting agreements between NHIDA and one or more underwriters. While the Company would not be a party to any underwriting agreements, any such agreements will provide that their terms will be satisfactory to the Company. Additionally, the Company may provide certain written assurances to the underwriter or underwriters.

NEP is requesting NHIDA to issue PCRBs to be sold to the public which contain provisions whereby the interest rate is either (i) periodically adjusted by a remarketing agent on the basis of prevailing market conditions, or (ii) at a fixed rate for the entire term of the bonds. Pursuant to one or more loan agreements or supplemental loan agreements between the Company and NHIDA, NHIDA would lend the proceeds from the sale of the PCRBs to the Company in exchange for the Company's promise to make payments to NHIDA corresponding to the payments of the principal of and premium, if any, and interest on the PCRBs sold to the public. To secure its obligations, the Company would issue equal principal amounts of New G&R Bonds to NHIDA bearing the same date, maturity and interest rate provisions as the PCRBs.

Mr. McLaren explained that New G&R Bonds issued in connection with the issuance of PCRBs may bear interest from a date before their authentication. In addition, these bonds may contain sinking fund, mandatory redemption, and optional redemption provisions that differ from those typical G&R Bonds.

Because the interest paid to holders of the PCRBs would be exempt from Federal income tax under the Internal Revenue Code, NEP anticipates that purchasers of these bonds would be willing to accept a lower interest rate. Mr. McLaren stated that, based on the most current market conditions, NEP would expect a one and one-half percentage point differential between the cost of the proposed bonds if they carried a fixed interest rate and any New G&R Bonds issued directly to the public by the Company. He further explained that this would save the

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Company approximately $750,000 per year in interest expense over the 30-year term of the issue.

Mr. McLaren testified that the proceeds from the sale of PCRBs would be held in trust pending disbursement to refund pollution control revenue bonds or to reimburse the Company for expenditures related to pollution control equipment.

The Company suggests that the maximum interest rate of New G&R Bonds issued to support PCRBs with a variable interest rate should not exceed 14 percent per annum, and the maximum interest rate on New G&R Bonds issued to support PCRBs with a fixed rate should not exceed 10 percent per annum. According to NEP, if a higher rate were subsequently required in either instance, NEP would come before the commission to request approval to increase the rate.

The Company's request includes the refinancing of $32.9 Million of outstanding bonds previously issued by the NHIDA. On June 16, 1988 one year bonds in the amount of $28.75 will mature and on November 18, 1981 $4.1 million of five year bonds will mature. The $32.9 million of refinanced bonds would be exempted from the limit on tax exempt bonds which may be issued in 1988 under the annual volume cap. The Company is also requesting approval for an additional $17.1 million of G&R Bonds to support PCRB's, and is currently attempting to identify additional qualified facilities so that it can take advantage of additional allocations under the 1988 annual volume cap. However, during the hearing Mr. McLaren stated that NEP had not yet approached NHIDA, either formally or informally, and agreed that there was some risk that the terms of any future borrowing may differ from those available now. Tr. 11-12

The commission will grant authorization of the $50 million request at this time. However, prior to the issuance of the additional $17.1 million of NHIDA bonds we will require the Company to provide further detail on the proposed terms and conditions. Upon receipt of that detail a supplemental order will be issued to approve the future issue of $17.1 million of bonds.

The New Pledged Bonds would be issued and pledged, from time to time, to the Trustee for the G&R Bonds as additional security, representing a First Mortgage claim for the holders of all G&R Bonds. When issued, the New Pledged Bonds will contain the same interest payment provisions and have the same maturity date as the series of G&R Bonds with respect to which they are issued. The New Pledged Bonds will not pay interest as long as interest payments are

made on the G&R Bonds. The Company will receive no proceeds from the issue and pledge of New Pledged Bonds.

Upon investigation and consideration of the evidence submitted, the commission is of the opinion that granting the petition will be consistent with the public good.

Our Order will issue accordingly.

ORDER

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

ORDERED, that the issue by New England Power Company of one or more series of General and Refunding Mortgage Bonds, in not exceeding $50,000,000 aggregate principal amount, and one or more series of First Mortgage Bonds, in not exceeding $50,000,000 aggregate principal amount, are reasonably necessary for the purposes for which such issues have been authorized; and it is

FURTHER ORDERED, that the execution and delivery by New England Power

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Company of one or more loan agreements or supplemental loan agreements with The Industrial Development Authority of the State of New Hampshire is reasonably necessary for the purpose for which such loan agreements or supplemental loan agreements have been authorized; and it is

FURTHER ORDERED, that the commission hereby grants to New England Power Company its authorization and approval, in conformity with all the provisions of law relating thereto, of the issue and sale of one or more series, in aggregate not exceeding $50,000,000 principal amount, of General and Refunding Mortgage Bonds, to mature in not more than 30 years from the date on which the Bonds are issued; and it is

FURTHER ORDERED, that the General and Refunding Mortgage Bonds authorized and approved by the commission herein if issued with an adjustable interest rate shall bear interest at a potential maximum rate not in excess of 14 percent per annum, and if issued with a permanently fixed interest rate shall bear interest at a rate not in excess of 10 percent per annum (in either case unless a subsequent Order of the commission approves a higher rate), and are to be sold with such interest rate and at such price as to conform with the interest rate and price of pollution control revenue bonds to be issued simultaneously therewith by The Industrial Development Authority of the State of New Hampshire; and it is

FURTHER ORDERED, that, in connection with the financing of expenditures relating to pollution control facilities, the commission hereby grants to New England Power Company its authorization and approval, in conformity with all provisions of law relating thereto, of execution and delivery of one or more loan agreements or supplemental loan agreements between New England Power Company and The Industrial Development Authority of the State of New Hampshire, under which loan agreements New England Power Company will agree to make payments to such agency at such times and in such manner as will correspond to the payments for principal, premium, if any, and interest on pollution control revenue bonds issued

on the Company's behalf; provided, however, the terms of any such loan agreements or supplemental loan agreements will provide that the potential maximum variable interest rate payable by the Company is not to exceed 14 percent per annum and the maximum fixed interest rate payable by the Company is not to exceed 10 percent per annum, unless otherwise ordered by the commission; and it is

FURTHER ORDERED, that the commission hereby grants to New England Power Company its authorization and approval, in conformity with all provisions of law relating thereto, from time to time to issue and pledge First Mortgage Bonds, in one or more series, in aggregate principal amount not exceeding the aggregate principal amount of General and Refunding Mortgage Bonds authorized and approved by the commission herein, said additional First Mortgage Bonds to bear the same interest rate and to have the same maturity as the General and Refunding Mortgage Bonds with respect to which they are issued; and it is

FURTHER ORDERED, that the authorization to issue securities contained herein, except with regard to First Mortgage Bonds, shall be exercised on or before December 31, 1988, and not thereafter, unless such period is extended by Order of this commission; and it is

FURTHER ORDERED, that the authorization to issue and pledge First Mortgage Bonds contained herein shall expire at

such time as there are no longer any publicly held First Mortgage Bonds outstanding; and it is

FURTHER ORDERED, that after the issue of $32,900,000 of refinancing bonds, New England Power will provide further details of the proposed additional $17,000,000 of bonds for authorization by a supplemental order; and it is

FURTHER ORDERED, that on or about January first and July first in each year, said New England Power Company shall file with this Commission a detailed statement, duly sworn by its Treasurer or Assistant Treasurer, showing the disposition of the proceeds of said securities, until the expenditure of the whole of said proceeds shall have been fully accounted for.

By order of the Public Utilities Commission of New Hampshire this ninth day of May, 1988.

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NH.PUC*05/11/88*[51998]*73 NH PUC 221*Northeast Hydrodevelopment Corporation — McLane Dam

[Go to End of 51998]

73 NH PUC 221

Re Northeast Hydrodevelopment Corporation — McLane Dam

DR 85-186
Order No. 19,091

New Hampshire Public Utilities Commission

May 11, 1988

ORDER requiring hydroelectric project developer to show cause why long-term rate order should not be rescinded.

COGENERATION, § 24 — Rates — Recision of rate order — Show cause proceeding — Failure to achieve commercial operation.

[N.H.] A hydroelectric project developer was ordered to appear before the commission and show cause as to why the developer's long-term rate filing, including an interconnection agreement, should not be rescinded where the hydroelectric project failed to achieve commercial operation within the time constraints of the rate order, thereby indicating that the filing was premature.

By the COMMISSION:

ORDER

WHEREAS, on August 13, 1985 the commission approved a petition by Northeast Hydrodevelopment Corporation (NHC) for certain long term rates for its McLane Dam Project by order no. 17,809 (70 NH PUC 708) 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) (DE 83-62); and

WHEREAS, said petition and approval specified a commercial operation date of power year 1987, the latest start year available pursuant to DE 83-62; and

WHEREAS, power year 1987 ended August 31, 1987; and

WHEREAS, the commission has been informed by the Federal Energy Regulatory Commission (FERC) that NHC has not yet received its FERC license to develop the McLane Dam and independent investigation by the commission has revealed that NHC has not yet begun construction of its project; and

WHEREAS, the commission has previously found that a developer's failure to reasonably fulfill his obligations under his rate order, including the representation that beginning in a specified year he will sell the output from his project to Public Service Company of New Hampshire and provide reliable service over the life of the

obligation, are grounds for the rescission of the developer's rate order [see *Re D. J. Pitman International Corp.*, Docket no. 85-139, report and order no. 18,667 (May 11, 1987) (72 NH PUC 166) and no. 18,719 (June 19, 1987) (72 NH PUC 232) (Pitman) and *Re HDI-Hinsdale Inc. — Upper Robertson Dam*, Docket no. 84-347, report and order no. 18,668 (May 11, 1987) (72 NH PUC 169) and no. 18,718 (June 19, 1987) (72 NH PUC 230) (HDI-Hinsdale)] ; and

WHEREAS, the commission also found in Pitman and HDI-Hinsdale that delays caused by the FERC licensing procedure were not sufficient justification for a waiver of the developer's obligations under his rate order; and

WHEREAS, the commission further found in HDI-Hinsdale that failure to achieve commercial operation within the time constraints of the rate order indicates that the filing was premature and that

> 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. Report and order no. 18,718 at 3 (72 NH PUC at 232); and

WHEREAS, the same rationale appears to apply to NHC for the McLane Dam and NHC may no longer be eligible for its commission approved long term rates; it is therefore

ORDERED, that NHC appear before the commission at 10:00 A.M. on the tenth day of June, 1988 and show cause why approval of its long term rate filing, including the interconnection agreement and the rates set forth on the long term worksheet, should not be rescinded; and it is

FURTHER ORDERED, that all direct testimony and exhibits be pre-filed with the commission on June 7, 1988.

By order of the Public Utilities Commission of New Hampshire this eleventh day of May, 1988.

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NH.PUC*05/12/88*[51996]*73 NH PUC 216*Manchester Water Works

[Go to End of 51996]

73 NH PUC 216

Re Manchester Water Works

DR 88-50
Order No. 19,088

New Hampshire Public Utilities Commission

May 12, 1988

ORDER approving an increase in front-foot charges applicable to water main extensions.

RATES, § 602 — Water — Front-foot charges — Main extensions.

[N.H.] An increase in front-foot charges applicable to the main extensions of a water utility was approved where the manner in which the increase was calculated was consistent with past practice and the increase appeared to be in the public good.

By the COMMISSION:

ORDER

WHEREAS, on March 28, 1988 Manchester Water Works filed for effect on May 1, 1988 a revised tariff page concerning an increase of $.95 to the existing $11.26 front-foot charge cost applicable to main extensions, and

WHEREAS, the commission staff has examined the manner in which the increase was determined and finds the calculation to be consistent with previous foot-frontage charges and that the charge appears to be in the public good; it is therefore

ORDERED, that Tenth Revised Page Twenty-two of Manchester Water Works NHPUC No. 3 — Water be, and hereby is, approved for effect on May 1, 1988.

By order of the Public Utilities Commission of New Hampshire this twelfth day of May, 1988.

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NH.PUC*05/12/88*[51999]*73 NH PUC 222*Manchester Water Works

[Go to End of 51999]

73 NH PUC 222

Re Manchester Water Works

DE 88-046
Order No. 19,092

New Hampshire Public Utilities Commission

May 12, 1988

ORDER nisi authorizing extension of water utility service.

SERVICE, § 210 — Extensions — Water utility — Hearing request.

[N.H.] A water utility was authorized to extend its mains and service into a municipality where no other water utility had franchise rights, provided that no hearing requests on the issue were filed with the commission prior to the effective date of such service.

By the COMMISSION:

ORDER

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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 March 23, 1988, 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 Selectman, 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 May 25, 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 May 19, 1988 and documented by affidavit to be filed with this office on or before June 1, 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 the intersection of Interstate Route 93 and the Manchester/Hooksett town line; thence, westerly along the northerly limits of the existing franchise, granted in docket DE 87-90/#18709; thence, northerly along routes 293 and 93 to the northerly lot line of Lot 76; thence, easterly following the northerly limits of Lots 76, 71, 70 and 64 to the center line of the Merrimack River; thence, southerly following said center line to the point of beginning.

and it is

FURTHER ORDERED, that such authority shall be effective on June 1, 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 twelfth day of May, 1988.

73 NH PUC 223

Re Hampton Water Works Company

DR 87-255
Supplemental Order No. 19,093

New Hampshire Public Utilities Commission

May 12, 1988

ORDER authorizing water utility to implement temporary rates.

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1. RATES, § 85 — State commission jurisdiction — Over temporary rates — Duty to investigate.

[N.H.] The commission's power to set temporary rates is discretionary and shall be

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exercised only when such rates are in the public interest; the commission's duty to investigate a temporary rate request is less than is required when setting permanent rates, and any overrecovery or underrecovery resulting from the temporary rates will be addressed by allowing the customers or company recoupment of such overrecovery or underrecovery. p. 224.

2. RATES, § 630 — Temporary rates — Water utility

[N.H.] A water utility that had not received a rate increase since 1982 was authorized to implement temporary rates at current rate levels. p. 224.

APPEARANCES: Dom S. D'Ambruoso, Esquire of Ransmeier and Spellman for Hampton Water Works Company, Joseph Rogers, Esquire for the Consumer Advocate and Martin C. Rothfelder, Esquire for the commission and the commission staff.

By the COMMISSION:

REPORT REGARDING TEMPORARY RATES AND PREHEARING CONFERENCE

This report and order authorizes temporary rates and adopts a procedural schedule to govern this proceeding consistent with the April 12, 1988 agreement of the parties to this case.

On February 5, 1988 Hampton Water Works Company (Hampton or the Company) filed

revised tariffs designed to increase its revenues by $597,000 on an annual basis and a petition for temporary rates. On March 4, 1988, the commission suspended the proposed tariffs, and set a prehearing conference for April 12, 1988. On April 12, 1988, the parties came before the commission and indicated they had reached a settlement regarding the issue of temporary rates and the procedural schedule under which the permanent rate case should proceed.

[1] Turning first to temporary rates, 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 a temporary rate request 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).

The commission staff and the consumer advocate agreed to temporary rates at current levels effective the date of issuance of this order or the date of filing of an affidavit showing publication of notice, whichever is later. The parties agreed to the commission accepting into evidence the prefiled testimony of Rod Nevirauskas for the limited purpose of supporting this settlement. The parties waived cross-examination on this testimony as long as its use was for the specified limited purpose.

[2] On April 15, 1988, Hampton Water Works Company filed the required affidavit of publication. It appears that Hampton Water Works Company has not received a rate increase since 1982. *See: Re Hampton Water Works Co.,* 67 NH

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PUC 295 (1982). In light of all the foregoing, the commission finds it reasonable to provide for temporary rates at current rate levels effective the date of this order. The commission accepts the testimony of Rod Nevirauskas for the limited purpose discussed above.

During the prehearing conference, the parties stipulated the following procedural schedule:

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

June 7, 1988	— Company Testimony and Exhibits Related To Updated Test Year Due
June 28, 1988	— Staff and Intervenor Data Requests on Company Due
July 12, 1988	— Company Responses to Intervenor and Staff Data Requests Due
July 26, 1988	— Staff and Intervenor Second Set of Data Requests Due
August 9, 1988	— Company Responses to Second Set of Data Requests Due
August 23, 1988	— Consumer Advocate Testimony Due
August 30, 1988	— Staff Testimony Due
September 13 & 19, 1988	— Pre-Hearing Conference 10:00 a.m. (off the record)
September 28 & 29, 1988	— Hearings (10:00 a.m. each day)

After the prehearing conference, the consumer advocate filed a letter requesting that

September 13 not be set for the prehearing conference.

The commission finds it unfortunate that the consumer advocate did not bring its concerns regarding the September 13 date to the prehearing conference. Nevertheless, the commission will grant the consumer advocate's request regarding September 13. However, the consumer advocate shall take the lead on contacting other parties to arrange a date or dates for the prehearing conference. With the exception of the September 13 and 19, 1988 dates, the commission finds the requested procedural schedule reasonable and shall order it to govern this proceeding. The consumer advocate shall, by letter, advise the commission of the date or dates of any prehearing conference. Said letter shall be filed on or before August 1, 1988.

Our Order will issue accordingly.

SUPPLEMENTAL ORDER

Based upon the foregoing REPORT REGARDING TEMPORARY RATES AND PREHEARING CONFERENCE, which is incorporated herein by reference, the commission

ORDERS, that the company shall be authorized to implement temporary rates at current rate levels effective for service rendered on and after the effective date of this order; and it is

FURTHER ORDERED, that the procedural schedule discussed in the foregoing report shall govern this proceeding, unless otherwise ordered by the commission.

By order of the Public Utilities Commission of New Hampshire this twelfth day of May 1988.

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NH.PUC*05/13/88*[52001]*73 NH PUC 226*New Hampshire Electric Cooperative, Inc.

[Go to End of 52001]

73 NH PUC 226

Re New Hampshire Electric Cooperative, Inc.

DE 88-067
Order No. 19,094

New Hampshire Public Utilities Commission

May 13, 1988

ORDER establishing emergency requirements for deposits and prepayments held by an electric cooperative.

SERVICE, § 188 — Extensions — Customer contributions — Deposits and prepayments — Emergency powers.

[N.H.] The commission exercised its emergency powers to require an electric cooperative in

financial difficulty to hold deposits for service and prepayments for line extensions in a separate segregated account on behalf of the people or entities making such a prepayment or deposit, and further ordered that should the cooperative find such a requirement overly cumbersome, that as an alternative it may no longer accept any deposits or prepayments of any kind, return all such moneys held, and bill and accept payment only for services in arrears.

By the COMMISSION:

REPORT INITIATING DOCKET AND SETTING EMERGENCY REQUIREMENTS

Since December, 1987 the commission has, on an informal basis, monitored financial problems of the New Hampshire Electric Cooperative, Inc. (NHEC or Coop) pursuant to its duty to keep informed under RSA 374:4 and its powers to investigate under RSA 374:3 and 365:5. The commission's monitoring indicates that the Coop's source of financing, the Rural Electrification Administration, is not providing the Coop with necessary amounts to meet its obligations. Thus, the Coop has not met certain of its obligations.

Considering the problem of the Coop's circumstances, the commission deems it appropriate to assure that certain obligations — those resulting from commission authorized deposits and prepayments — are met. In the commission's opinion, deposits for service and prepayments for line extensions (and similar equipment necessary for service) should be considered funds of customers and prospective customers that are held by the company. Similarly, under certain circumstances the Coop may receive commission authorized prepayments for work related to potentially bringing a small power producer on line pursuant to section 210 of the Federal Public Utilities Regulatory Policies Act as amended, 16 USCS § 824a-3 (1987 supp.) or the State Limited Electrical Energy Producers Act, RSA 362-A. In the commission's opinion, such prepayments should be considered funds of the existing or potential small power producer.

While we properly view these deposits and prepayments as property of the provider of these funds, our expertise in this area tells us that they are generally commingled with the company funds and managed in aggregate. Such action may be an acceptable and perhaps even a preferred method for handling these funds under normal circumstances. At present; however, the Coop does not face normal circumstances.

The commission believes that it should take action expeditiously to assure the Coop's commitments in the form of the commission authorized prepayments and deposits described above. Potential actions by the Coop or its creditors that could jeopardize these deposits and

prepayments, such as a filing in bankruptcy court, are not likely to be known in advance. Thus, the commission finds it appropriate to use its emergency powers in this instance.

With regard to our emergency powers, recently the supreme court stated that:

> The statute [RSA 378:9] grants the commission broad discretionary powers. The commission may determine whether a state of emergency exists for a public utility or the public, increase or decrease rates, and disregard existing rules and regulations without

requiring the customary complement of formal hearings and investigations.

Re: Public Service Co. of New Hampshire, N.H. Supreme Court Case No. 87-311, slip opinion at 15 (January 26, 1988) (— N.H. —, 92 PUR4th 546, 539 A.2d 263). The commission finds that the potential of creditor or Coop action jeopardizing deposits and prepayments, along with the inability to predict such action, constitutes a crisis. Thus, the commission finds it necessary for the Coop to take the following action. If the Coop continues to hold and accept deposits and prepayments it shall hold each such deposits and prepayments in a separate segregated account (or accounts) on behalf of the people or entities making the prepayment or deposit. If the Coop finds such requirements overly cumbersome, it may as an alternative no longer accept any deposits or prepayments of any kind, return all such moneys now held, and bill and accept payment for services only in arrears. The Coop shall, by letter, advise the commission of which option it shall take on or before the effective date of the attached order.

The commission further wishes to consider such actions as permanent revisions to the Coop's tariffs. Thus it shall set a hearing on this matter for 10:00 a.m. on July 19, 1988. The Coop shall prefile testimony and exhibits addressing such changes and any related topic it wishes to address on or before twenty-five days prior to said hearing.

Our order will issue accordingly.

ORDER

Based on the foregoing REPORT INITIATING DOCKET AND SETTING EMERGENCY REQUIREMENTS, which is incorporated herein by reference, the commission

ORDERS, that the New Hampshire Electric Cooperative, Inc. shall follow the emergency requirements set up in the foregoing report; and it is

FURTHER ORDERED, that the Coop shall inform the commission by letter of exactly which emergency option it shall follow as detailed in the foregoing report; and it is

FURTHER ORDERED, that the Coop shall file testimony for consideration of implementing the emergency requirements on a permanent basis as detailed in the foregoing report; and it is

FURTHER ORDERED, that hearings shall be held on July 19, 1988 as detailed in the foregoing report, to consider the permanent changes to the New Hampshire Electric Cooperative, Inc.'s tariffs; and it is

FURTHER ORDERED, that this order is effective ten days from the date hereof.

By order of the Public Utilities Commission of New Hampshire this thirteenth day of May, 1988.

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NH.PUC*05/19/88*[52002]*73 NH PUC 228*Lakeport Hydroelectric Corporation, Inc.

[Go to End of 52002]

73 NH PUC 228

Re Lakeport Hydroelectric

Corporation, Inc.

DR 85-156
Order No. 19,095

Re Alden T. Greenwood, d/b/a Alden Engineering Company

DR 85-230
Order No. 19,095

New Hampshire Public Utilities Commission

May 19, 1988

ORDER rescinding approval of a nonlevelized rate for the last ten years of a thirty-year rate order.

COGENERATION, § 20 — Levelization of prices — Long-term rate order — Hydroelectric projects.

[N.H.] Where the commission had previously approved hydroelectric long-term rates for a nonlevelized thirty-year term and for the last ten years of a thirty-year rate order, the authority to provide nonlevelized rates for the last ten years of both orders was rescinded, because upon reconsideration, it was found that a rate design incorporating unlevelized 1985 estimates of avoided costs for the last ten years of the orders was not just and reasonable to the electric consumers of the electric utility nor in the public interest as required by rules of the Federal Energy Regulatory Commission and by the Public Utility Regulatory Policies Act of 1978.

By the COMMISSION:

ORDER

WHEREAS, on May 17, 1985 pursuant to *Re Small Energy Producers and Cogenerators,* DE 83-62, 69 NHPUC 352, 61 PUR4th 132 (1984) (DE 83-62), Lakeport Hydroelectric Corporation (LHC) filed a long term rate petition for its Lakeport Dam Project that requested *inter alia* a thirty year rate order levelized for the first twenty (20) years (1986-2005) and tracking the avoided costs thereafter (2006-2015); and

WHEREAS, the commission approved LHC's petition by order no. 17,895 on October 11, 1985; and

WHEREAS, on June 20, 1985 pursuant to DE 83-62, Alden T. Greenwood d/b/a Alden Engineering Company (ATG) filed a long term rate filing for the Waterloom Falls, Otis Falls and Chamberlain Falls hydroelectric stations that requested *inter alia* a non-levelized thirty year rate for the years 1986-2015; and

WHEREAS, the commission approved ATG's petition by order no. 17,814 on August 13, 1985; and

WHEREAS, the commission has previously denied unlevelized rates for the last ten years of thirty year rate orders, noting that

> The purpose of allowing 30 year rates was to enable small power producers that must incur heavy capital expenditures to use the levelized value of the 21st through 30th years of the rate to offset the cash flow requirements of the early years of the project. The added risk of the uncertainty of projections 20 to 30 years in the future is mitigated by the high discount rate applied to the rate in general. It is clear that the instant projects do not require and do not intend to make use of the levelized value of the last ten years of their rate to offset near-term cash flow problems. Therefore, approval of a thirty year rate with the last ten years unlevelized exposes future ratepayers (i.e., those in the years

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> 2006-2015) to the risk of paying a small power producer an undiscounted rate based on a projection made in 1985. On reconsideration, the Commission believes that the added risk to future ratepayers, not balanced by either the intended benefit of providing necessary support for a small power producers' cash flow problems or the mitigating effect of a high discount rate, is contrary to the Commission's intent in DR 83-62 when it made 30 year rates available to small power producers. *Re Goodrich Falls Hydroelectric Corp.,* DR 86-14, *Re Franklin Falls Hydroelectric Corp. (Salmon Brook),* DR 86-15, *Re Franklin Falls Hydroelectric Corporation (Franklin Falls),* DR 86-16, 71 NH PUC 247, 248 (1986). See also *Re White Mountain Hydroelectric Corp.,* DR 86-85, 71 NH PUC 255 (1986); and

WHEREAS, the same analysis and rationale applies to the instant LHC and ATG rate filings; and

WHEREAS, on reconsideration the commission finds that non-discriminatory treatment of qualified facilities as specified by the Public Utilities Regulatory Policies Act of 1978 (PURPA) and the rules adopted by the Federal Energy Regulatory Commission, 16 U.S.C. § 824a-3b (FERC) requires consistent action by the commission for facilities that are similarly circumstanced; and

WHEREAS, on reconsideration the commission finds that a rate design incorporating unlevelized 1985 estimates of avoided cost for the years 2006-2015 is not just and reasonable to the electric consumers of the electric utility and in the public interest, as required by PURPA and the FERC rules; it is therefore

ORDERED, that the approval in order no. 17,895 and in order no. 17,814 of the 20 years 1986-2005 be, and hereby is, re-affirmed; and it is

FURTHER ORDERED, that the approval in order no. 17,895 and in order no. 17,814 of the 10 years 2006-2015 be, and hereby is, rescinded.

By order of the Public Utilities Commission of New Hampshire this nineteenth day of May, 1988.

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NH.PUC*05/25/88*[52003]*73 NH PUC 229*Granite State Gas Transmission, Inc.

[Go to End of 52003]

73 NH PUC 229

Re Granite State Gas Transmission, Inc.

DF 87-153
Supplemental Order No. 19,098
New Hampshire Public Utilities Commission
May 25, 1988

ORDER authorizing a gas transmission utility to elect a credit rate option pursuant to a previously authorized order for a revolving loan agreement. For prior order see 72 NH PUC 441.

SECURITY ISSUES, § 107 — Interest rate — Notes — Gas transmission utility.

[N.H.] A gas transmission utility was granted authority for election of a revolving credit rate option pursuant to a previous order that authorized the utility to enter into a revolving credit and term loan agreement with a short-term line of credit up to $7 million.

By the COMMISSION:

SUPPLEMENTAL 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 was authorized on September 21, 1987 by the New Hampshire Public Utilities Commission; (commission) pursuant to R.S.A. 369:1, 4 and 7 to enter into a Revolving Credit and Term Loan Agreement to provide Granite with a short-term revolving line of credit in an amount up to $7,000,000 and to convert up to $4,000,000 of the revolving credit balance to a ten-year term loan with the remaining amount to be repaid by an equity contribution from Northern Utilities (Northern); and

WHEREAS, the Commission, on September 21, 1987, ordered that Granite shall provide notice and receive approval from the Commission of the interest rate option which Granite elects under the ten-year term note; and

WHEREAS, Granite entered into a Revolving Credit and Term Loan Agreement with The First National Bank of Boston dated as of September 30, 1987; and

WHEREAS, Granite, by letters dated May 12, 1988 and May 23, 1988, informed the commission that of the $4,000,000 amount approved for conversion to a ten year loan, due to the lower project costs incurred, only $3,000,000 would be so converted, of which Granite has elected to convert $1,000,000 into a fixed rate five year term loan at approximately 9.88% to be converted at the end of five years into either a fixed or variable rate term loan for the remainder of the ten year period and to convert $2,000,000 to a ten year variable rate option that enables Granite to select a diversified portfolio of 30 day, 60 day, 90 day or 180 day rates, convertible to a fixed rate at the end of any variable period; and

WHEREAS, Northern will repay the remaining outstanding balance of the short term revolving line of credit with its equity infusion; and

WHEREAS, the Commission believes that it is consistent with the public good to approve Granite's application to elect the interest rate options described above; it is

ORDERED, that Granite State Gas Transmission, Inc. therefore be and hereby is authorized to elect the interest rate option described in connection with the conversion of its Revolving Credit Agreement to the Term Loan.

By order of the Public Utilities Commission of New Hampshire this twenty-fifth day of May, 1988.

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NH.PUC*05/26/88*[52004]*73 NH PUC 230*New England Telephone and Telegraph Company, Inc.

[Go to End of 52004]

73 NH PUC 230

Re New England Telephone and Telegraph Company, Inc.

DE 88-072
Order No. 19,099

New Hampshire Public Utilities Commission

May 26, 1988

ORDER nisi granting license to construct, operate and maintain submarine telephone utility plant.

CERTIFICATES, § 123 — Grant or refusal — Submarine telephone cable.

[N.H.] A telephone utility was granted a license to place and maintain a 600-pair submarine cable beneath a lake in order to relocate, replace and upgrade existing outside plant facilities

serving an island, provided that no hearing requests on the matter are received.

By the COMMISSION:

ORDER

WHEREAS, on May 12, 1988, the New

England Telephone & Telegraph Company, Inc. (NET) filed with this Commission its petition seeking license to place and maintain a 600-pair submarine cable beneath the public waters of Lake Winnipesaukee in Alton, New Hampshire; and

WHEREAS, said cable is proposed to relocate, replace and upgrade existing outside plant facilities serving Barndoor Island from the NET Wolfeboro Exchange; and

WHEREAS, said project has received the approval of the Water Supply & Pollution Control Division and the Wetlands Board of the Department of Environmental Services under project 87-297; and

WHEREAS, NET has assured the Commission that all construction, maintenance, and operation of said cable will meet the safety requirements specified by the New Hampshire Code of Administrative Rules, Chapter Puc 400 as well as the conditions specified by the DES agencies cited above; and

WHEREAS, such construction will not adversely affect the public rights in said waters; it is

ORDERED, that the Commission finds the submarine crossing described herein will be in the public good, improving the NET capability to serve its Wolfeboro Exchange customers; and it is

FURTHER ORDERED, that the Commission feels the public should be given the opportunity to respond either supporting or opposing this construction; and it is

FURTHER ORDERED, that NET give notice to all persons desiring to make such comments to submit them in writing to the Commission and/or to request a public hearing on the matter no later than June 25, 1988; and it is

FURTHER ORDERED, that such notice be given by one-time publication in *The Union Leader* and in a regional newspaper widely circulated in the Alton/Wolfeboro area, such publication to be no later than June 5, 1988 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 NET be, and hereby is, granted license under RSA 371:17 et seq to construct operate and maintain submarine cable plant beneath the waters of Lake Winnipesaukee, said cable originating at Pedestal No. 17 located on the mainland property of the Chard Harlow Trust and Norman Segal, extending underground to the shoreline approximately 30 feet distant, thence submarine for approximately 527 feet, continuing underground approximately 60 feet to an unnumbered pole of the Wolfeboro Municipal Electric Department

located on the Barndoor Island property of Mr. and Mrs. Fox; said construction further identified by maps and drawings on file with the Commission; and it is

FURTHER ORDERED, that all construction meet the requirements of the National Electrical Safety Code as well as requirements specified by the Department of Environmental Services; and it is

FURTHER ORDERED, that such license shall become effective on June 30, 1988 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 twenty-sixth day of May, 1988.

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NH.PUC*06/07/88*[52005]*73 NH PUC 232*Link-Up New Hampshire

[Go to End of 52005]

73 NH PUC 232

Re Link-Up New Hampshire

DE 88-012
Order No. 19,102

New Hampshire Public Utilities Commission

June 7, 1988

ORDER reaffirming the scope of the proceeding as established in order of notice for Link-Up America telephone program.

PROCEDURE, § 13 — Scope of proceeding — Link-Up America telephone program.

[N.H.] The commission affirmed its previously established scope of a proceeding to determine whether New Hampshire should participate in the Federal Communications Commission Link-Up America program — i.e., a program to enable low-income households to subscribe to telephone service.

PARTIES: As previously noted

By the COMMISSION:

REPORT ON SCOPE OF PROCEEDINGS

The following report concerns the scope of the proceeding. It sets forth the legal arguments of the parties and reaffirms the original scope.

I. *Procedural History*

On February 3, 1988, we issued an order of notice opening this generic docket to investigate the provision in New Hampshire of the Federal Communications Commission (FCC) program known as Link-Up America. This telephone assistance program would enable low-income households currently without telephones to subscribe to telephone service by paying one-half of the installation and connection charges or an amount up to $30.00 whichever is less. The order required the New Hampshire telephone companies to file a plan for implementation of Link- Up New Hampshire.

The procedural history is substantially as set forth in the Report on Prehearing Conference and Order No. 19,056. In addition, we are aware that the parties have been negotiating. In accordance with Order No. 19,056, the parties have filed legal memoranda or position papers supporting various scopes.

II. *Position of the Parties*

This section summarizes the arguments made by the parties.

A. Volunteers Organized in Community Education

Volunteers Organized in Community Education (VOICE) argues that the scope should be broadened. If the object of the proceeding is to assist low-income households obtain and maintain telephone service then, VOICE avers, other obstacles to universal service should be addressed in this docket and/or companion dockets. VOICE would include the following issues in the docket:

1. Deferred payment plans for the balance of connection charges

2. Security deposit waivers for low-income households and customers with poor credit histories

3. Advance payment of outstanding bills or arrearages as a condition of taking

service

4. Lifeline and assistance for payment of current bills

VOICE asserts that the first two issues listed above are within the scope of the FCC's program and that the remaining issues should be considered because they promote the FCC goal of universal service.

B. New England Telephone Company

New England Telephone Company (NET) argues that the scope should only include the creation of a Link-Up America program, as established by the FCC. Thus, according to NET, the investigation should consider security deposit requirements for low-income customers who do not have poor credit histories. For the same reason, NET contends that, the issues of security deposits for customers with poor credit histories and the payment of outstanding arrearages should not be considered.

C. Union Telephone Company

Union Telephone Company (Union) avers that the investigation of the provision of Link-Up America in the State of New Hampshire is the legitimate subject matter in this case. Given the intent of the FCC's Link-Up program, as set forth in its order, Union contends that the proceeding may properly include the issue of reduction or waiver of deposit requirements for low-income subscribers. It argues that questions of waivers of customer arrearages or of lifeline telephone service are not contemplated by the scope of the FCC's order or the commission's order of notice and, therefore, should not be part of this proceeding.

D. Contel of New Hampshire, Inc. and Contel of Maine, Inc.

Contel of New Hampshire, Inc. and Contel of Maine, Inc. (Contel) states that the order of notice sets forth the proper scope of the proceeding as Link-Up America, including the provisions of the FCC's Link-Up order by reference. Thus, under the Contel argument, the investigation may consider telephone security deposits applicable to eligible Link-Up customers. Contel asserts that consideration of issues not included in the FCC Link-Up program would impede prompt implementation, a result that is not in the public interest. It argues that the proceeding should not include a consideration of customer arrearages or the federal lifeline program because these issues are beyond the scope of the FCC Link-Up program.

III. *Commission Analysis*

For the reasons discussed below, we will maintain the scope of the proceeding set forth in the order of notice.

Link-Up New Hampshire is an important program that demands our immediate attention. Approximately thirty-one states have implemented this program. We feel that, should we decide to implement this program in New Hampshire, it is in the public interest to do so as soon as possible. Since the parties agree on the value of this program to the public, consensual implementation appears possible. Introduction of peripheral, contested issues will impede this implementation process. Therefore, we reaffirm the scope of the proceeding set forth in the commission's order of notice which incorporates by reference the terms of the FCC Link-Up program.

This docket will consider the provision in New Hampshire of the FCC's Link-Up

America program as described in 47 C.F.R. § 67.711. Therefore, we will investigate deferred payment plans for connection charges and security deposit waivers for low-income householders. 47 C.F.R. § 67.711 (a)(2) and (c). Because the FCC Link-Up program does not include security deposit waivers for customers with bad credit, lifeline assistance programs, or arrearage payment policies, we will not consider these issues in this docket.

Our order will issue accordingly.

ORDER

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

ORDERED, that the scope of this proceeding, established in our order of notice, is affirmed.

By order of the Public Utilities Commission of New Hampshire this seventh day of June, 1988.

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[Go to End of 52006]

73 NH PUC 234

Re Northern Utilities, Inc.

DR 88-029
Order No. 19,105

New Hampshire Public Utilities Commission

June 23, 1988

ORDER authorizing a natural gas utility to increase its rates on a temporary basis and establishing a procedural schedule for its permanent rate case.

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1. RATES, § 85 — Powers of state commissions — As to schedules and rate structures — Temporary rates.

[N.H.] The commission may set temporary rates for the period of a permanent rate proceeding if in its opinion the public interest requires temporary rates. p. 236.

2. RATES, § 630 — Temporary rates — Reasonableness.

[N.H.] The commission determines temporary rates based on a 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. p. 236.

3. RATES, § 85 — Duties of state commissions — As to schedules and rate structures — Temporary rates.

[N.H.] The commission's duty in setting temporary rates is less than is required in setting permanent rates. p. 236.

4. RATES, § 630 — Temporary rates — Natural gas utility.

[N.H.] A natural gas utility, the earnings of which were insufficient to recover its authorized rate of return, was authorized to implement temporary rates for the period of its permanent rate proceeding. p. 236.

APPEARANCES: Eliah G. Farrah, Esq. and Paul B. Dexter, Esq., of Leboeuf, Lamb, Leiby, and

MacRae on behalf of Northern Utilities, Inc.; Larry F. Eckhaus, Esq. for the Consumer Advocate; and Martin C. Rothfelder, Esq. on behalf of the staff of the New Hampshire Public Utilities Commission.

By the COMMISSION:

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REPORT ON TEMPORARY RATE PETITION AND PREHEARING CONFERENCE

This report concerns the petitions of Northern Utilities, Inc. for temporary and permanent rates. It sets forth the procedural history, findings of fact, agreements of the parties, and analysis. It approves the temporary rates and establishes a procedural schedule to govern the permanent rate request.

I. *Procedural History*

On April 8, 1988, Northern Utilities, Inc., (Northern) a gas public utility, operating in a portion of the state, filed revised tariff pages to NHPUC No. 7, providing for increased revenues in the amount of $1,101,171.00 effective May 8, 1988. On the same day, Northern filed a petition requesting a temporary rate increase, pursuant to RSA 378:27, in the amount of $550,000.00 (approximately a 3.8% revenue increase over the 1987 total utility revenue).

On May 6, 1988, the commission issued order no. 19,087 suspending the revised tariff pages pending investigation. On May 10, 1988, the commission issued an order of notice, which set June 3, 1988 as the date for a public hearing on the temporary rate request, and a prehearing conference on the issue of permanent rates. On May 26, 1987, Northern filed testimony supporting the temporary rate request.

II. *Positions of the Parties*

A. Temporary Rate Petition

Northern argued in favor of the temporary rate increase. It contended that the increase was necessary to allow it to earn a reasonable return on its net plant. The staff of the commission also presented testimony in support of the temporary rate request.

B. Permanent Rate Procedural Schedule

The parties proposed two different procedural schedules, set forth as Schedules #1 and #2 below. Schedule #1 was advocated by the staff and the consumer advocate, but opposed by Northern. It includes sufficient time for the staff to conduct an audit. Schedule #2 was advocated by Northern and does not include time for an audit. Northern requested the more abbreviated schedule so that the permanent rates would go into effect as soon as possible. The staff and the consumer advocate stated that they would agree to Schedule #2 if the commission does not require an audit. However, the staff noted that it was the staff's current practice to conduct audits in the course of rate cases.

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

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          Schedule #1
August 26, 1988                First Set of Staff and
                               Intervenor Data Requests
                               Due on Rate Design Only.
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September 16, 1988	Company Responses to August 26 Data Requests Due.
September 30, 1988	First Set of Staff and Intervenor Data Requests Due On Everything But Rate Design.
October 14, 1988	Company Responses to First Set of Data Requests (Non-Rate Design) due.
October 25, 1988	Second Set of Staff Data Requests Due.
November 10, 1988	Company Responses to Staff and Intervenor Second Set of Data Requests Due.
December 12, 1988	Intervenor Testimony.
December 16, 1988	Staff Testimony Due.
December 22, 1988	Company's Data Requests on Staff and Intervenor Testimony Due
January 3-4, 1988	Prehearing Conference.
January 4, 1988	Intervenor and Staff, Responses to Company's Data Requests Due.
January 24-26, January 31 through February 2, 1989	Hearings (10:00 a.m.)

Schedule #2

August 19, 1988	Staff and Intervenor First Set of Data Requests Due.
September 2, 1988	Company Responses to Data Requests Due.
September 16, 1988	Staff and Intervenor Second Set of Data Requests Due.
September 30, 1988	Company Responses to Staff and Intervenor Second Set of Data Requests Due.
October 28, 1988	Intervenor Testimony Due
November 4, 1988	Staff Testimony Due.
November 9, 1988	Prehearing Conference
November 14, 1988	Company Data Requests on Staff and Intervenor Testimony Due.
November 28, 1988	Staff and Intervenor Responses to Company Data Requests Due.
December 12-16, 1988	Hearings (10:00 a.m.)

III. *Commission Analysis*

"**[1-4]**" 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 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.

Id. The commission's duty to investigate temporary rates 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; 2d 810 (1959).

Based on a calculation using amounts from the most recent reports of the company (on file with the commission) and the last allowed return of equity (15.25%), the company is under-earning by approximately $700,000. Based upon this limited inquiry, it appears that the requested temporary increase will allow Northern to earn a reasonable return on its net plant. Therefore, we will permit the temporary increase for service rendered on or after the date of this report and order.

The commission has a duty to keep informed about utilities and has found staff audits useful in the rate case process. Therefore, we find it appropriate to adopt a schedule that assures that staff can incorporate an audit into its rate case presentation. Only schedule #1 assures that objective. Thus, we will approve Schedule #1 to govern this proceeding.

Our order will issue accordingly.

ORDER

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Upon consideration of the foregoing Report on Temporary Rate Petition and Prehearing Conference, which is made a part hereof, it is hereby

ORDERED, that Northern Utilities, Inc. be permitted to increase its existing rates, on a temporary basis, at an annual level of $550,000.00, effective for service rendered on or after the date of this order; and it is

FURTHER ORDERED, that the procedural schedule #1 contained in the foregoing report shall govern this proceeding unless otherwise ordered.

By order of the Public Utilities Commission of New Hampshire this twenty-third day of June, 1988.

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NH.PUC*06/24/88*[52007]*73 NH PUC 237*Pennichuck Water Works, Inc.

[Go to End of 52007]

73 NH PUC 237

Re Pennichuck Water Works, Inc.

DF 88-076
Order No. 19,106

New Hampshire Public Utilities Commission

June 24, 1988

PETITION by a water utility for authority to issue short-term securities to finance construction of transmission line; granted.

SECURITY ISSUES, § 44 — Authorization — Factors — Construction projects.

[N.H.] Where a water utility was authorized by a prior commission order to enter into an agreement with a municipality to construct a transmission main to provide wholesale water service, the utility was subsequently granted authority to finance the project by the issuance of up to $1.3 million of unsecured bonds with a fixed interest rate of 8 percent for five years.

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i. SECURITY ISSUES, § 44 — Authorization — Factors — Financing methods — Water utility.

[N.H.] Statement, in dissenting opinion, that commission approval of financing for an agreement between a water utility and a municipality for construction of a transmission main unnecessarily involved a lack of protection for the utility and its ratepayers. p. 238.

By the COMMISSION:

ORDER

WHEREAS, Pennichuck Water Works, Inc., by letter to the Public Utilities Commission dated May 27, 1988, requested authority to issue and sell $1,300,000 of unsecured debt; and

WHEREAS, by Order No. 19,027 of this Commission dated March 7, 1988 (73 NH PUC 88), Pennichuck Water Works, Inc. was authorized to enter into an "Agreement" with the Town of Milford to construct a transmission main, running from its core system in Nashua to the existing Milford water distribution system, together with a booster station, pumps and related equipment such as meters and recording devices ("Project"), and thereby provide Milford with wholesale water service; and

WHEREAS, the Project cost is estimated to be $1.3 million, and is comprised of several components, including among other items, approximately $1 million for materials and labor, and an estimated $200,000 for the booster station, pumps and related equipment; and

WHEREAS, Pennichuck Water Works, Inc., has obtained a loan commitment from Merrill, Lynch, Pierce, Fenner & Smith Incorporated ("Merrill") in the total amount of up to $1,300,000 million for permanent financing of the Project. This

financing will be accomplished by the issuance of up to $1.3 million of unsecured tax-exempt bonds by the Industrial Development Authority of the State of New Hampshire ("Bonds") with interest at a fixed rate of 8 percent for 5 years; and

WHEREAS, Pennichuck Water Works, Inc. has represented that pursuant to the terms of the proposed agreement with Merrill, on July 1, 1993, the Company has the option of redeeming the Bonds, in whole or in part, at a redemption price equal to the principal amount, plus interest which has accrued, and the Bonds are subject to tender for purchase by petitioner at the option of then owners of the bonds ("Bondowners") at a price equal to the principal amount; and

WHEREAS, Pennichuck Water Works, Inc. has represented that pursuant to the terms of the proposed agreement with Merrill, on July 1, 1993, if the Bondowners elect not to tender for purchase and the Company elects not to redeem the Bonds, the interest rate on the Bonds after July l, 1993 will be in accordance with prevailing market conditions set by Advest, Inc. and that such rate, at the option of Pennichuck Water Works, Inc. shall pertain for a period of one, five, ten, fifteen, twenty or twenty-five years before further adjustment in accordance with market conditions; and

WHEREAS, Pennichuck Water Works, Inc. shall use the loan proceeds for costs incurred for construction of the Project and to defray the expenses and charges of accomplishing the proposed financing; and

WHEREAS, Pennichuck Water Works, Inc. has filed with the New Hampshire Public Utilities Commission schedules and statements reflecting among other things, the estimated costs of the financing; a Balance Sheet and Statement of Capitalization Ratios at March 31, 1988 adjusted to reflect the issuance of $1,300,000 of unsecured debt; a Statement of Income and Statement of Interest Coverages for the 12 months ended March 31, 1988 also proformed; and finally a letter of Commitment executed by Merrill on May 2, 1988; and

WHEREAS, this Commission under RSA 369:1 finds that the request is consistent with the public good; it is hereby

ORDERED, that Pennichuck Water Works, Inc., be, and hereby is, authorized to issue and sell, and from time to time renew, for cash its notes, bonds, or other evidences of indebtedness, in the principal amount of up to $1,300,000 upon terms set forth; and it is

FURTHER ORDERED, that on or about January first and July first of each year, said Pennichuck Water Works, Inc. shall file with this Commission a detailed statement, duly sworn to by its Treasurer, showing the disposition of the proceeds of said notes, bonds, or other evidences of indebtedness payable herein authorized, until the whole of said proceeds have been accounted for to the full satisfaction of said Commission.

By order of the Public Utilities Commission of New Hampshire this twenty-fourth day of June, 1988.

DISSENTING OPINION OF COMMISSIONER LINDA G. BISSON

[i] By Order No. 19,027 in docket DR 87-167 issued March 7, 1988 (73 NH PUC 88), the majority of the commission approved a special contract between Pennichuck Water Works, Inc. (Pennichuck) and the Town of Milford, New Hampshire (Milford) for the provision of wholesale water service by Pennichuck to Milford. At that time, by separate opinion I found that although the provision of such service

was in the public interest, the specific terms of the contract were not. Based upon those same guidelines, I cannot agree with the majority's approval of the financing in this docket.

In DR 87-167, the primary departure from the existing Pennichuck tariffs for the special contract was the shift of the financing risk of the required pipeline from the customer being

served to the company and its body of ratepayers. Based on the record presented to the commission, I found that shift not only unjustified but also avoidable by our exercise of jurisdiction at that point. In this docket, Pennichuck asks us to approve the financing for that pipeline.

This financing, like the contract in DR 87-167, unnecessarily involves a lack of protection for the company and its ratepayers. It is, therefore, not in the public interest. Thus, I cannot concur in the order issued by my colleagues.

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NH.PUC*06/24/88*[52008]*73 NH PUC 239*First Carolina Cable TV

[Go to End of 52008]

73 NH PUC 239

Re First Carolina Cable TV

DE 88-086
Order No. 19,107

New Hampshire Public Utilities Commission

June 24, 1988

ORDER nisi authorizing installation of aerial cable television plant.

CERTIFICATES, § 101.1 — Grant or refusal — Cable television — Aerial plant.

[N.H.] A license was granted to a cable television company for the installation and maintenance of aerial cable plant across public waters for the purpose of replacing similar plant currently out of use due to bridge reconstruction.

By the COMMISSION:

ORDER

WHEREAS, on June 9, 1988, the 1st Carolina Cable TV petitioned this Commission for license to install, maintain and operate aerial cable plant over and across the public waters of the Connecticut River in Cornish, New Hampshire; and

WHEREAS, said cable crossing comprises necessary facilities to serve 1st Carolina's customers in Windsor, Vermont and replaces similar plant currently crossing said river on the Cornish covered bridge; and

WHEREAS, said bridge is undergoing reconstruction necessitating the cable relocation; and

WHEREAS, the replacement cable is proposed for placement approximately one-half mile upstream of the bridge, originating at Pole 16A to be placed by the Connecticut Valley Electric

Company or its parent, Central Vermont Public Service Corporation, thence traversing the river to a pole in Windsor, Vermont, located in the vicinity of the junction of River Street and Jarvis Street in said town; and

WHEREAS, since bridge construction forces relocation of said cable, the Commission finds that the new cable plant and its associated crossing of the Connecticut River is in the public interest in order to provide continuous service to 1st Carolina's customers in Windsor; and

WHEREAS, the Commission also finds that public good requires an opportunity be given to all those desiring to comment in favor of, or in opposition thereto, said crossing; it is

ORDERED, that all persons desiring to respond be notified that they may submit their comments in writing or request a public hearing on the matter to reach this

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Commission no later than July 11, 1988; and it is

FURTHER ORDERED, that such notification be given by one-time publication of this order no later than June 30, 1988 in a newspaper having general circulation in the Cornish NH and Windsor VT areas and documented by an affidavit to be made on a copy of this order filed with this Commission; and it is

FURTHER ORDERED, *NISI*, that 1st Carolina Cable TV be, and hereby is, granted license under RSA 371:17 et seq to construct, operate and maintain a single 0.750 coaxial cable lashed to a 5/16 messenger cable originating at Pole 16A to be erected on Route 12A in Cornish NH traversing the Connecticut River to a pole to be erected by 1st Carolina or its agent in the vicinity of Jarvis and River Streets in Windsor VT, such poles and cable to meet or exceed the requirements of the National Electrical Safety Code and sound industry practices; and it is

FURTHER ORDERED, that said cable plant also meet the requirements of the U. S. Army Corps of Engineers, the Department of Environmental Resources and the Department of Resources and Economic Development; and it is

FURTHER ORDERED, that said license 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 twenty-fourth day of June, 1988.

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NH.PUC*06/27/88*[52009]*73 NH PUC 240*James E. Pomerleau

[Go to End of 52009]

73 NH PUC 240

Re James E. Pomerleau

DE 88-084

Order No. 19,108

New Hampshire Public Utilities Commission

June 27, 1988

ORDER nisi authorizing placement of telephone submarine cable.

CERTIFICATES, § 123 — Grant or refusal — Telephone submarine cable.

[N.H.] A license was granted for the placement of a telephone submarine cable beneath a lake in order to provide needed telephone communications between an island and the mainland, provided that no hearing requests on the issue are received.

By the COMMISSION:

ORDER

WHEREAS, on June 6, 1988, James E. Pomerleau filed with this Commission his petition seeking license to install and maintain submarine cable beneath the public waters of Lake Winnipesaukee in Moultonborough, New Hampshire; and

WHEREAS, said submarine cable will provide much needed telephone communications between the Dow Island residence(s) of James E. Pomerleau et al and the mainland; and

WHEREAS, Mr. Pomerleau has certified that such installation shall be according to specifications of the New England Telephone & Telegraph Company and will meet all applicable safety codes; and

WHEREAS, the Commission finds that

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the addition of telephone service to Dow Island enhances the safety and well being of the residents of said island; and

WHEREAS, the Commission finds that this crossing will not substantially affect the public rights in said waters; and

WHEREAS, the Commission has been assured that necessary easements have been obtained for the landline portion of this service from the originating pole to the shoreline; and

WHEREAS, the Commission also finds that the public should be given the opportunity to respond in favor of, or in opposition to the 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 this matter before this Commission no later than July 15, 1988; and it is

FURTHER ORDERED, that James E. Pomerleau provide said notice by one-time publication of this order in a newspaper generally circulated in the affected area, such

publication to be no later than July 6, 1988 and documented by affidavit to be filed with this Commission on or before July 14, 1988; and it is

FURTHER ORDERED, *NISI*, that James E. Pomerleau be, and hereby is granted license under RSA 371:17 et seq to install and maintain submarine cable plant beneath the public waters of Lake Winnipesaukee in Moultonborough, New Hampshire as depicted in drawings on file with this Commission and further described as a 5-pair submarine cable originating at NHEC Pole No. 15004/30, continuing underground beneath the property of Robert S. Wells on Long lsland in said town, thence submarine for approximately 3100 feet to the property of James E. Pomerleau on Dow Island; and it is

FURTHER ORDERED, that all construction meet the requirements of the National Electrical Safety Code, the standards of New England Telephone as well as the specifications of the Department of Environmental Services; and it is

FURTHER ORDERED, that such license shall be effective on July 18, 1988, 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 twenty-seventh day of June, 1988.

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NH.PUC*06/27/88*[52010]*73 NH PUC 241*Gas Service, Inc.

[Go to End of 52010]

73 NH PUC 241

Re Gas Service, Inc.

Additional party: Nashua Corporation

DR 88-80
Order No. 19,109

New Hampshire Public Utilities Commission

June 27, 1988

ORDER approving contract for the interruptible sale of gas.

RATES, § 380 — Gas — Special factors — Interruptible sale — Special contract.

[N.H.] A contract was approved that outlined the terms and conditions whereby a gas supplier would sell interruptible gas to an industrial corporation.

By the COMMISSION:

ORDER

WHEREAS, on May 28, 1988, Gas Service, Inc. filed with this commission its

Special Contract No. 50, said contract outlining the terms and conditions under which that company would sell interruptible gas to Nashua Corporation; and

WHEREAS, the commission finds that issuance of said contract is in the public good; and

WHEREAS, the proposed contract is consistent with existing contracts of its type and with commission policy; it is hereby

ORDERED, that Special Contract No. 50 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-seventh day of June, 1988.

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NH.PUC*06/27/88*[52011]*73 NH PUC 242*Southern New Hampshire Water Company, Inc.

[Go to End of 52011]

73 NH PUC 242

Re Southern New Hampshire Water Company, Inc.

DF 88-075
Order No. 19,111

New Hampshire Public Utilities Commission

June 27, 1988

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

SECURITY ISSUES, § 98 — Short-term debt limit — Water utility.

[N.H.] A water utility was conditionally authorized to temporarily increase its short-term debt limit to $5 million where the estimated construction expenditures of the utility exceeded internally generated funds; approval was conditioned upon the public having an opportunity to respond in support or opposition of the increased debt limit.

By the COMMISSION:

ORDER

WHEREAS, Order No. 18,964 (DF 87-215) of this commission dated January 7, 1988 (73 NH PUC 10) authorized Southern New Hampshire Water Company, Inc. to have a short-term debt level of $3,000,000 as previously authorized in Order No. 18,404 until such time that the First Mortgage Bonds, Series H are issued, at that time the short-term debt limit will be reduced to the $2,000,000 level; and

WHEREAS, under Order 18,964 the authority to issue the First Mortgage Bonds, Series H, expired on May 31, 1988; and

WHEREAS, the company has apparently not issued the series H. bonds referred to in order 18,964; and

WHEREAS, Order 18,964 indicates that based upon company witness Phelps testimony, the commission anticipated that the short term debt limit of $3,000,000 would be unnecessary after the issuance of more long term securities;

WHEREAS, Southern New Hampshire Water Company, Inc., on May 17, 1988, requested that its authorization to incur indebtedness, payable in less than twelve (12) months after the date thereof, be increased to an aggregate amount outstanding at any one time to not in excess of $5,000,000; and

WHEREAS, Southern New Hampshire Water Company, Inc. estimates that its construction expenditures will exceed internally generated funds and will require authorization to increase its short-term indebtedness to an aggregate amount not in excess of $5,000,000; and

WHEREAS, this commission upon investigation and consideration finds that the short term debt level for this company

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is already high and will rise upon full exercise of the short term borrowing authority; and

WHEREAS, such increased short term borrowing may impair the solvency and financial flexibility of the company and may preclude the company from obtaining long term debt financing on reasonable terms at a later date; and

WHEREAS, this commission finds that although the request is consistent with the public good in light of the capital expenditure plans of the company and the present inability to secure long term debt at reasonable rates, additional common equity financing may be as appropriate as borrowing under the new authority proceeds; 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 July 15, 1988, and it is

FURTHER ORDERED, that Southern New Hampshire 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 June 30, 1988, and documented by affidavit to be filed with this office on or before July 15, 1988; and it is;

ORDERED, *NISI* that Southern New Hampshire Water Company, Inc., without obtaining further approval of the commission, be and hereby is, authorized, from time to time, to issue and renew its notes, bonds, or other evidences of indebtedness payable in less than twelve (12) months after the date thereof, in an aggregate amount thereof outstanding at any one time not in excess of $5,000,000 for the time period indicated below; and it is

FURTHER ORDERED, that the level of short term debt will be reduced to its former level of $2,000,000 following either a) Southern New Hampshire's first long term debt issuance or b) one year from the date of this order whichever occurs sooner; and it is

FURTHER ORDERED, that on or about January first and July first of each year, said Southern New Hampshire Water Company, Inc. shall file with this commission a detailed statement, duly sworn to by its Treasurer, showing the disposition of the proceeds of said notes, bonds, or other evidences of indebtedness.

FURTHER ORDERED, that this order shall be effective on July 19, 1988, unless a request for hearing is filed 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-seventh day of June, 1988.

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NH.PUC*06/27/88*[52012]*73 NH PUC 243*West Epping Water Company

[Go to End of 52012]

73 NH PUC 243

Re West Epping Water Company

DE 87-093, DE 87-248
Order No. 19,112

New Hampshire Public Utilities Commission

June 27, 1988

ORDER granting permission to a water company to provide service as a public utility.

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1. CERTIFICATES, § 125 — Water — Authorization to operate as public utility — Factors considered.

[N.H.] A water company, that was an unincorporated association of three customers from

another water system, was authorized to operate as a water service public utility, contingent upon the company's incorporation, because: (1) there was a need for such service and no other entity was willing and able to provide that service; (2) adequate facilities existed to provide service; (3) the financial ability required for system operation was assured through mutual agreement of the parties; and (4) the applicant had demonstrated its management and administrative expertise, technical resources and general fitness through its historical provision of service.
p. 246.

2. PUBLIC UTILITIES, § 121 — Water — Exemption from rate regulation.

[N.H.] Where a water company was an unincorporated association made up of three customers from another water system that was granted authority to operate as a water service public utility, it was found that commission approval of rates was not necessary because the three customers were sharing responsibility for the costs of the service; however, the commission will regulate the quality of service and will investigate any specific customer complaints about rates.
p. 247.

APPEARANCES: Richard F. Fisher, on behalf of West Epping Water Company; Charles H. Morang, Esq. on behalf of the Town of Epping Water and Sewer Commission, and Mary C.M. Hain, Esq. on behalf of the staff of the New Hampshire Public Utilities Commission.

By the COMMISSION:

REPORT

This report concerns the petitions of the West Epping Water Company for authorization to operate as a water service public utility, pursuant to RSA 374:22 and 374:26; or in the alternative, for exemption from regulation, pursuant to RSA 362:4. The report details the procedural history of the case and the positions of the parties. It provides findings of fact and analysis and authorizes the operation.

I. *Procedural History*

On May 15, 1987, West Epping Water Company (the company) petitioned for authority (pursuant to RSA 374:22 and 374:26) to establish a water service public utility in a limited area in the Town of Epping. By an order of notice dated July 16, 1987, the New Hampshire Public Utilities Commission (PUC) opened docket no. DE 87-093 to investigate the petition and ordered that a prehearing conference be held on July 23, 1987. On July 20, 1987, the Town of Epping Water and Sewer Commission (the Water and Sewer Commission) filed a motion to intervene. At the July 23, 1987 prehearing conference the parties stipulated to a procedural schedule. By order no. 18,784, dated August 5, 1987, the PUC approved the procedural schedule and granted the Water and Sewer Commission's motion for intervention.

On December 1, 1987, the company filed a petition for exemption from regulation pursuant to RSA 362:4. By an order of notice dated December 7, 1987, the PUC closed docket DE 87-093 and opened DE 87-248 to investigate the petition for exemption. The order of notice set a hearing date on January 13, 1988. The company did not appear at the January 13, 1988 hearing.

At the hearing, the Water and Sewer Commission requested that the PUC consider it to be an interested party

in docket DE 87-248 and moved that the PUC continue the hearing.

The PUC granted the intervention of the Water and Sewer Commission from the bench. At the same time, the PUC reopened docket DE 87-093, consolidated it with docket DE 87-248, and continued the proceeding. Report and order no. 18,983 (January 22, 1988) (73 NH PUC 28) set April 14, 1988 as the hearing on the merits of the two outstanding petitions.

II. *Positions of the Parties*

A. West Epping Water Company

West Epping Water Company supported its request for a franchise. In the alternative, it argued in favor of an exemption from regulation. The company alleges that it does not believe the Water and Sewer Commission will be willing or able to provide water service in the near future.

B. Town of Epping Water and Sewer Commission

The Town of Epping Water and Sewer Commission argues that the company should be allowed to provide service on an interim basis only, because the Water and Sewer Commission will be ready to serve the area in a number of months. The Water and Sewer Commission also argued that the PUC should continue the proceeding until the company had filed written testimony and the Water and Sewer Commission had an opportunity to conduct discovery and cross-examination on this testimony.

III. *Findings of Fact*

The service territory originally requested was shown on a U.S. Geological Survey map showing West Epping, New Hampshire and was described as follows:

> beginning at the north side of Route 101; easterly to Beede Road; northerly along Beede Road and Depot Road to Route 27; westerly along Route 27; westerly along Route 27 to the Lamprey River; southerly to Route 101.

At the hearing on the merits the requested service territory was amended to include only the eleven parcels of land with frontage on Hickory Hill Road, an 11.53 acre parcel between the B&M Railroad and Mill Road containing the six inch well, and an undeveloped eleven acre parcel adjacent to the Hickory Hill Road properties between the B&M Railroad and Route 101.

No public utility serves this area. The Water and Sewer Commission does not have any facilities to serve this area. The record shows that the town of Epping voted to test certain parcels of land that would be involved in extending water service to West Epping. However, the voters defeated a $4.6 million proposal to extend water service to West Epping at this time. Therefore, the Town is not willing and able to provide service.

The system has two wells. Each well produces 50 gallons per minute. However, existing pumping capacity is about 50 gallons per minute in total. One well is twelve feet deep to ledge

and has produced excellent quality water unless over-pumped. The other is a six inch in diameter well that produces good quality water, but it is only 400 — 420 feet from the twelve foot well. The recent expenditures by the company for one drilled well, one six inch by twenty-seven foot screen well, two protective easements, and the main into the system, demonstrate the company's ability to

meet emergency expenses.

The company is presently serving three customers. Two of these customers have agreed that whatever money is necessary to provide good water at proper volume and pressure, will be made available to the company.

Two out of the three customers provide water to a total of eleven tenants as part of the provision of housing. The cost of water is recovered through the rent and is not a separate charge. One customer is also obligated, pursuant to the terms of the easement for the six inch well and the protective easement around that well, to supply 1800 gallons per day of water to the servient tenement (i.e. to the structures on the land burdened by the easement), if requested. However, it is unlikely that service will be requested because the servient tenement has its own wells and the property owners are trying to buy an adjacent property with a 50 gallon per minute well.

The company is an unincorporated association of three customers of the West Epping water system (located at Hickory Hill). The principles of the unincorporated association have the property rights necessary to operate the water supply system. The only contemplated improvements are individual residence meters (used to detect system leaks) and a third automatic backup pump. The company has agreed to file with the PUC all terms, conditions, and rates for service.

The customers have a written agreement, filed with the registry of deeds, that states the following payment obligations. Fisher, one customer, pays the costs of electricity and maintenance of pumps. Golden, another customer, pays for all monthly costs of water. Golden and Lee (another customer) pay all additional costs of water.

IV. *Commission Analysis*

We find that the petition is supported by the evidence and should be granted, contingent upon the company's incorporation. Since the company requested an exemption in the alternative, we do not find it necessary to rule on that request.

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 at 5, 70 NH PUC 563, 566 (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.

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 & Transmission Co., Inc., DSF 82-30, Order No. 15,755 at —, 67 NH PUC 478, 484 (July 9, 1982).

In addition, a public utility must be organized under the laws of the state of New Hampshire. RSA 374:24.

[1] The facts demonstrate that the company is not incorporated under the laws of the state of New Hampshire. Therefore, we will require the company to become incorporated as a prerequisite to our granting authority.

The facts show a need for the service because the company is currently providing the service. Further, there is no other entity willing and able to provide service.

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We find that the applicant will have adequate facilities to provide service. These facilities do not require approval of the Department of Environmental Services, Division of Water Supply and Pollution Control. The financial ability required for the operation of the system is assured through the mutual agreement of the parties. The applicant has demonstrated its management and administrative expertise, technical resources and general fitness through its historical provision of service.

[2] It should be noted that, under the circumstances, PUC approval of rates is not necessary. The three primary customers are sharing responsibility for the costs of the service. The rates for service to tenants will not be directly regulated because it is part of the rent. However, we will regulate the quality of service and will investigate any specific customer complaints about rates.

Our order will issue accordingly.

ORDER

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

ORDERED, that West Epping Water Company be, and hereby is, granted permission to provide service as a public utility as of the date it incorporates; and it is

FURTHER ORDERED, that, pursuant to RSA 347:15, West Epping Water Company submit all the filings and reports as the New Hampshire Public Utilities Commission shall, from time to time, require to allow 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 RSA 374:8, 374:10, and 374:15 respectively; and that pursuant to RSA 363-A:1, *et seq.*, West Epping Water Company pay all assessments levied upon the corporation 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-seventh day of June, 1988.

73 NH PUC 247

Re Granite State Electric Company

DR 88-007
Order No. 19,113

New Hampshire Public Utilities Commission

June 28, 1988; revised July 7, 1988

ORDER approving the cooperative interruptible rate program of an electric utility.

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1. RATES, § 327 — Electricity — Cooperative interruptible service — Off peak use — Discount rate.

[N.H.] Under a cooperative interruptible service (CIS) program to be offered by an electric utility as a means of encouraging large customers to shed load during periods of peak demand, a customer who signs up for the program would receive a discount from his available firm service rate — i.e., in addition to the bill for firm service, the CIS customer would receive an annual interruption credit on their bill; the annual interruption credit would be the product of three factors: (1) nominal interruptible load; (2) customers' peak period load factor; and (3) dollar credit per kilowatt of interruptible load. p. 252.

2. RATES, § 327 — Electricity — Cooperative interruptible service — Off peak use — Noncompliance charges.

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[N.H.] Under a cooperative interruptible service (CIS) program to be offered by an electric utility as a means of encouraging large customers to shed load during periods of peak demand, a customer who signs up for the program would be charged for each kilowatt of noncompliance load; a noncompliance charge would be assessed after each called interruption during which the customer exceeds the firm power level on average during the interruption period. p. 253.

3. RATES, § 327 — Electricity — Cooperative interruptible service — Off peak use.

[N.H.] In approving a cooperative interruptible rate program to be offered by an electric utility as a means of encouraging large customers to shed load during periods of peak demand, the commission found that the ability of the utility to interrupt load during high cost periods can result in operating savings and, in the long term, may allow for deferral of capacity additions. p.

253.

4. RATES, § 327 — Electricity — Cooperative interruptible service — Off peak use — Discount rates.

[N.H.] In an order approving a cooperative interruptible electric rate program (which would allow an electric utility to interrupt service to certain customers during periods of peak demand in return for supplying electricity to those customers at reduced rates) the following requirements were imposed to ensure that the program is implemented in a fair and nondiscriminatory manner: (1) the commission adopted form contracts detailing the program options; (2) the company was directed to make the program available to all customers meeting the eligibility requirements, except that the company may in a nondiscriminatory manner limit program participation to a total of 10 megawatts of interruptible load; (3) the company was directed to petition the commission for approval of all contracts entered under the program; (4) credits and charges must be based on cost information in the adopted form contracts; (5) the estimate of the avoided cost of capacity used to calculate the dollar per kilowatt value of interruptible load must be updated and any contracts signed prior to the update must be adjusted to reflect the updated estimate; and (6) the company must provide an analysis of the results of the program at the end of each year of program operations. p. 254.

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i. RATES, § 327 — Electricity — Cooperative interruptible service — Off peak use — Customer options.

[N.H.] Discussion, by commission, of various cooperative interruptible rate program options to be offered by an electric utility to its largest customers as a means of encouraging them to shed load during periods of peak demand. p. 249.

APPEARANCES: Phillip H.R. Cahill, Esq. for Granite State Electric Company; Martin C. Rothfelder, Esq. for the commission and commission staff.

By the COMMISSION:

REPORT

I. *PROCEDURAL HISTORY*

On January 7, 1988, Granite State Electric Company (Granite State or company) filed with the commission testimony and exhibits explaining and supporting several Cooperative Interruptible Service (CIS) programs that it proposed to offer to its largest customers. The filing proposed three families of interruptible service, CIS-1, CIS-2 and CIS-3 comprising a total of ten (10) different options. The basic objective of the CIS programs is to provide a customer with a discount from Granite State's firm service tariff in return

for that customer shedding a certain amount of load over a specified number of hours on a limited number of days.

On January 22, 1988 the commission issued Order No. 18,982 approving CIS-3 as a temporary interruptible program to be offered through special contracts and, *inter alia*, set a prehearing conference to address procedural matters regarding the three CIS programs. The commission convened a prehearing conference in this matter on March 22, 1988 and upon the recommendation of the parties adopted a procedural schedule.

Pursuant to the procedural schedule the company responded to data requests from the commission staff and the Office of the Consumer Advocate. On May 4, 1988 representatives of staff and Granite State held a settlement conference to limit the issues for hearing. On May 18, 1988 a hearing was held to consider the company's CIS program proposals. On May 25, 1988, the company submitted revised pages Al and A3 of the Appendix to the CIS-1 service agreement. These revised pages are hereby entered into the record as exhibits M-26 and M-27.

II. *THE CIS PROGRAM*

A. *Special Contracts*

The company proposes that the three families of CIS programs, CIS-1, CIS-2 and CIS-3 be filed as "form contracts" designed to allow modification to the ten (10) available options in a fashion that is consistent with the principles on which CIS is based. Under this proposal the form contracts would serve to define the CIS program structure and customer eligibility requirements, and would also form the basis for special contracts with individual customers. Pursuant to RSA 378:18 the company would seek approval for all special contracts executed under the CIS program. The company anticipates that special contracts that are deemed to be consistent with the CIS program principles would require relatively limited regulatory review. Further, the company represents that it would provide testimony that clearly describes and justifies any deviations from the terms and conditions of the form contracts contained in special contracts with individual customers.

Granite State argues that because customers differ in their willingness and ability to interrupt load, it is essential for program success to provide program flexibility and a wide range of choices. In this way a greater variety of customers will have an opportunity to participate in the CIS programs and, thereby, benefit themselves and help Granite State and the New England Electric System meet their load management goals.[1(18)]

B. *Program Options*

[i] CIS-1 has one option available that is designed to meet the standards set by the New England Power Pool (NEPOOL) for interruptible loads. Under this program NEPOOL will call for, or dispatch, the interruptible loads when there is a capacity constraint for the New England region as a whole.

CIS-2 has four options available that are structured to be dispatched by New England Power Company (NEP)[2(19)] based on its own supply and demand balance. That is, the interruption days will be chosen when overall demand is high and capacity is needed, thereby helping NEP maintain system reliability and reduce the need for costly new peaking capacity.

CIS-3 is a temporary interruptible program that parallels the options offered

under CIS-1 and CIS-2; however, this program is targeted at the current tight capacity situation in New England.

Under the company's proposal NEP will compensate Granite State for the administrative costs of all the CIS programs. NEP will also pass the capacity cost savings achieved by the program through Granite State to participating customers.

There are five dimensions to the customers' overall participation in the three CIS program families. These dimensions are:

1. frequency of interruptions,
2. duration of interruptions,
3. amount of notification prior to inter ruption,
4. fraction of the total load which must be made interruptible, and
5. commitment of years to the rate.

With respect to the first three dimensions, CIS-1 offers one option. Under NEPOOL dispatched interruptible loads, interruptible customers must meet certain NEPOOL established requirements before NEPOOL operators can dispatch them. The requirements on frequency, duration and notification of possible interruptions for NEPOOL “Type 2 Dispatchable Load” are currently under review and revision by NEPOOL. However, the company has proposed one standard option under CIS-1 subject to future revisions that may be required by NEPOOL. The single option proposed under CIS-1 has the following dimensions:[3(20)]

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

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Notification:                1 hour
Duration and Frequency:    300 hours per year
                           40 hours per month
                            8 hours per day
Nominal interruptible Load: 200 KW or the product of a) 1.00
                              minus Peak Period Load Factor;
                              and b) the Nominal Peak Period
                              Load
Commitment of years:        3 years with one year trial
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The CIS-2 program proposed by Granite State offers four options with respect to the notification, duration and frequency dimensions. In general, the options available under CIS-2 require less of a commitment in terms of the frequency and duration of possible interruptions than CIS-1 and therefore receive commensurately lower benefits. For customers who are willing to commit to the less frequent and shorter duration interruptions of CIS-2, the following alternatives are available.

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

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                  Alternative D1          Alternative D2
Duration & Frequency: 180 hours per year             60 hours per year
                      30 hours per month            18 hours per month
                       6 hours per day               6 hours per day
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Further, under CIS-2 there are two alternatives in terms of the minimum amount of time a

customer requires for notification. The two alternatives are:

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

	Alternative N1	*Alternative N2*
Notification	1 hour	16 hours

Alternative N2 is for customers who need notification on the previous business day, thereby allowing the customer to institute

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strategies that lessen the disruption to the business caused by the interruption. The duration (D1 and D2) and notification (N1 and N2) alternatives can be chosen independently resulting in the four complete options:

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

Option 2.1: 180 hour limit and 1 hour notice (Dl/N1)
Option 2.2: 180 hour limit and 16 hour notice (D1/N1)
Option 2.3: 60 hour limit and 1 hour notice (D2/N1)
Option 2.4: 60 hour limit and 16 hour notice (D2/N2).

Like the CIS-1 option, CIS-2 requires 200 KW of Nominal Interruptible Load. The company argues that the minimum amounts of Nominal Interruptible Load required to be eligible for these programs are to target the programs where they are likely to be more cost effective.

Both CIS-1 and CIS-2 programs require the customer, after a one year trial period, to make a commitment of at least three years. Therefore, under the CIS-1 and CIS-2 programs, the company proposes that a customer commit to notifying Granite State three years prior to terminating their participation in the program. The customer can elect, however, to roll forward this commitment and thereby extend the years of program participation.

With regard to the determination of the CIS-1 and CIS-2 credits, the company argues that because of the limited commitment the cost savings actually realized from load interruptions will be less than the long-run marginal cost of capacity. The company contends that three years is the minimal lead time needed to plan for alternative capacity. Further, according to the company the three year commitment balances the company's long term resource planning requirements with the relatively shorter planning horizon of their customers. The one year trial period is offered, so that eligible customers will have the opportunity to evaluate the impact of the program under real conditions. At the end of the trial period, the company proposes to evaluate the benefits to the customer and the utility.

In light of the current tight capacity situation in New England, the company also proposes to continue offering CIS-3 which requires only a one year commitment.[4(21)] CIS-3 is designed to complement CIS-1 and CIS-2 program terms and conditions while at the same time minimizing those terms and conditions most likely to discourage customer participation. CIS-3 has five options available that parallel the CIS-1 and CIS-2 options.

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

Option	*Notification*	*Frequency and Duration*		
		Per Year	*Per Month*	*Per Day*
3.1	*1 hour*	*300 hours*	*40*	*8*

3.2	1 hour	180 hours	30	6
3.3	16 hours	180 hours	30	6
3.4	1 hour	60 hours	18	6
3.5	16 hours	60 hours	18	6

The CIS-3 program options are available to all customers 200 KW and greater willing to designate the minimum required portion of their load as interruptible. In addition, Granite State has requested that the CIS-3 be available for one year with the hope that customers signing on to CIS-3 will, over time, become comfortable with the process and "trade up" to CIS-1 and CIS-2.

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C. *Interruptible Credits*

[1] A customer who signs up for a CIS program option will receive a discount from the available firm service rate that is applicable to that customer. That is, in addition to the bill for firm service, the CIS customer will receive an interruptible credit on their bill. The credit per KW of Credited Interruptible Load depends on the choice of CIS-1, CIS-2 or CIS-3 and the choice of a particular option.

The customer annual interruption credit is the product of three factors:

1. Nominal Interruptible Load
2. Customers' Peak Period Load Factor
3. $ Credit per KW of Interruptible Load

1.) Nominal Interruptible Load

Nominal Interruptible Load is defined as Nominal Peak Period Load (NPPL) minus the Firm Power Level. NPPL is a proxy for the load that would have been recorded during the interruption period "but for" the interruption. The NPPL is determined once before each program year, which lasts from May 1 until April 30 of the succeeding year. The NPPL is calculated as the average of the maximum peak period demands recorded by the customer during the preceding seven peak months. Peak months are June, July, August, September, December, January and February. Peak periods are on weekdays from 9 a.m. to 10 p.m. in the four summer months and from 8 a.m. to 9 p.m. in the three winter months.

The Firm Power Level is the KW demand that a customer agrees not to exceed for the duration of the interruption period. The firm power level can be directly determined from the demand record of the meter.

2.) Customer's Peak Period Load Factor

The customer's Peak Period Load Factor is defined as the average load factor during the peak periods for the same seven months used to define NPPL. The company proposes that to be eligible for the CIS programs, a customer must have a peak period load factor of at least 60%. The company avers that below a 60% load factor, customer interruptions provide relatively little cost savings.

3.) $ Credit per KW of Interruptible Load

The first step in the company's determination of the appropriate $ credit per KW is an estimate of NEP's avoided cost of capacity as a result of the CIS programs. For the CIS-1 and CIS-2 programs, the starting point for this determination is NEP's long-run marginal cost of generation and transmission capacity. Under CIS-3 the credit for each KW interrupted is based on the one year undiscounted value of capacity to NEP. This, in part, reflects the shorter commitment under the CIS-3 program.

Next the company translates the marginal capacity cost into the value per KW year of interruptible load. This step includes both adding value for factors that generate additional savings and subtracting value for factors that generate additional costs. A factor is built into all options to account for transmission loss savings stemming from the load reductions occurring at the customer's premises. Reduction factors built into the CIS programs include factors for the limited commitment of 3 years, the variation in the required annual duration of interruptions and the varying notification time periods.

In the third and last step, the costs

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which are specific to each customer are calculated. These include metering, communication and separate billing system costs. These costs are calculated as an annual customer charge and are rendered on a monthly basis.

For the CIS-1 and CIS-2 programs the company proposes to pay the annual credit in two parts: three fourths of it will be paid in 12 monthly installments, one fourth will be paid at the end of the program and is held as a reserve against non-compliance charges.

Under the CIS-3 temporary program the company proposes to pay half the credit on a monthly basis whether or not the customer is required to interrupt. The second half of the credit is paid on a performance basis only and no noncompliance charges are to be assessed beyond the loss of the credit.

D. *Non-compliance Charges*

[2] In addition to the calculation of the appropriate credit and customer charges under the various CIS program options the company also proposes, that under CIS-1 and CIS-2 each customer be charged for each KW of non-compliance load. Unlike Nominal Interruptible Load that is fixed throughout the year, Non-compliance Load is separately calculated for each interruption. The non-compliance charge is assessed after each called interruption during which the customer exceeds the Firm Power Level on average during the interruption period. The value of the non-compliance charge is determined by putting the annual credit on a per interruption, or daily basis, and then tripling it to get the non-compliance charge rate per day. Granite State argues that this gives the customer a strong incentive to comply with the agreement to interrupt load.

E. *Monitoring and Updating*

The company's proposal calls for an analysis of the results of the CIS program, on a customer specific basis, to be conducted at the end of each year of program operation. Granite State plans

to use a statistical model developed by the Electric Power Research Institute (EPRI) for the purpose of estimating the actual load relief obtained for interruptible programs such as CIS. The Nominal Interruptible Load will be compared with the Credited Interruptible Load and other program costs to make an evaluation of overall cost effectiveness of the CIS program.

In addition, the company intends to update its estimate of NEP's marginal cost of capacity that is used to calculate the $ per KW of Interruptible Load. Granite State has agreed to perform this update in the fall of 1988 and adjust any special contracts signed prior to the update to reflect the new estimate. Special contracts signed after the fall of 1988 will be based on the then current estimate of NEP's avoided capacity costs.

III. *COMMISSION ANALYSIS*

[3] The commission finds that Granite State's proposal to offer the CIS program to eligible customers is just and reasonable and in the public good. Therefore, we will approve the programs for resolution of this particular petition.

The ability of Granite State to interrupt load during high cost periods can result in operating savings and, in the long term, may allow NEP to defer capacity additions. The terms and conditions of interruptible programs need to specify the notification period for an intended demand reduction, the maximum duration of each interruption, the aggregate interruptions in

the year and the possible periods during which interruptions can occur. The ability of interruptible load to displace capacity at times of high system demand will be limited by these features. The valuation of interruptible load is thus based on the extent that the managed load can effectively replace capacity. Generally the proportion of the avoided cost of capacity that constitutes the appropriate payment will increase as the terms and conditions require a more onerous level of performance and the permanence of the interruptible load is more certain for the utility. The evidence in the record demonstrates that the terms and conditions of the CIS program generally meet these requirements.

Under the CIS program, Granite State reserves the right to interrupt service at selected times and in return the customer receives a reduced price for electricity. In other words, the CIS program will allow Granite State to differentiate price among customer classes on the basis of service priority.

[4] In general, the commission relies on the company's filed tariffs to represent the relationship between the company and its customers and thereby provide assurances that specific rate programs will be offered in a nondiscriminatory manner. While the company has referred to the CIS programs as “rates” and “tariffs” they in reality propose to offer the program through a series of special contracts. Granite State has argued that for this particular program to be successful a flexible program with a wide range of choices must be made available and that this can best be accomplished via special contracts. We accept the company's special contracting proposal for resolution of this particular petition; however, we impose the following requirements in order to ensure that the CIS program is implemented in a fair and nondiscriminatory manner.

1) The commission hereby adopts as form contracts for the purpose of detailing and describing the ten (10) CIS programs record exhibit nos. M-1 through M-22 (including Appendices) and revised pages Al and A3 of the Appendix to the CIS-1 service agreement recorded as exhibits M-26 and M-27.

2) The company shall make available the CIS program to all customers residing in Granite State territory that meet the CIS program eligibility requirements except that the company may in a non-discriminatory manner limit program participation to a total of 10 megawatts of interruptible load.

3) Pursuant to RSA 378:18 the company will petition the commission for approval of all special contracts entered into under the CIS program.

4) The interruptible credit, non-compliance charges and customer charges included in all special contracts are to be based on the cost information contained in the above adopted form contracts.

5) The company will update its estimate of NEP's avoided cost of capacity that is used to calculate the $ per KW of interruptible load by September 30, 1988. Any special contracts signed prior to the update shall be adjusted upward to reflect the new estimate approved by the commission. Special contracts signed after the date of the update shall be based on the current approved estimate of NEP's avoided capacity costs.

6) The company shall provide an analysis of the results of the CIS program at the end of each year of the programs operation. This analysis shall include, but is not limited to the following: 1.) an assessment of the actual load relief obtained under the program as measured by the EPRI's

statistical model referenced by the company in this proceeding, 2.) a comparison of Nominal Interruptible Load with Credited Interruptible Load and other program costs, and 3.) an evaluation of the overall cost effectiveness of the program.

7) The company will keep the commission and its staff appraised of developments regarding the implementation of the CIS programs, particularly with regard to both short and long term capacity planning requirements.

The success or failure of Granite State's CIS program will be determined by the actual reduction in system demand achieved in both the short and long term. This we believe will hinge primarily on the effectiveness of the company's marketing effort and on the attractiveness of the interruptible payments as viewed by potential program participants. With regard to the latter, we recognize that there is considerable room for judgement and therefore urge the company to keep this issue under review.

Our order will issue accordingly.

ORDER

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

ORDERED, that Granite State Electric Company's Cooperative Interruptible Rate program

discussed in the foregoing report is approved.

By order of the Public Utilities Commission of New Hampshire this twenty-eighth day of June, 1988.

FOOTNOTES

[1]The New England Electric System (NEES) is a public utility holding company of which Granite State is one of three electric utility operating subsidiaries.

[2]The New England Power Company is a generating and transmission subsidiary of the NEES and is the full requirements supplier for Granite State.

[3]For purposes of this report the following definitions are applicable: The proxy for the load that would have been recorded during the interruption period "but for" the interruption is the Nominal Peak Period Load. The Firm Power Level is the level of demand that the customer agrees not to exceed for the duration of the interruption period. Nominal Interruptible Load is defined as Nominal Peak Period Load minus the Firm Power Level and is the load made available by the customer for interruption. The Peak Period Load Factor is the average load factor of the customer during NEP's peak months.

[4]In its Order No. 18,982 in this docket the commission approved CIS-3 as a temporary interruptible rate program to be offered through special contracts.

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NH.PUC*06/28/88*[52014]*73 NH PUC 255*Long Distance North of New Hampshire, Inc.

[Go to End of 52014]

73 NH PUC 255

Re Long Distance North of New Hampshire, Inc.

Additional parties: MCI Telecommunications Corporation, U.S. Sprint Communications Company, Granite State Telephone, Inc., Dunbarton Telephone Company, Merrimack Telephone Company, Wilton Telephone Company, New England Telephone and Telegraph Company, Inc., Contel of New Hampshire, Inc., and Contel of Maine, Inc.

DE 87-249
Order No. 19,114

New Hampshire Public Utilities Commission

June 28, 1988

ORDER deferring a decision on the appropriate scope of a proceeding concerning a petition for authority to operate as a reseller of intrastate long distance telephone service and granting motions for late intervention.

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1. MONOPOLY AND COMPETITION, § 94 — Telephone — Competing toll service — Resale of intrastate toll service.

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[N.H.] A decision on the appropriate scope of a proceeding concerning a petition for authority to operate as a reseller of intrastate long distance telephone service was deferred pending completion of a cost of service study involving the dominant local exchange telephone carrier; the commission reasoned that the results of the study would provide information as to whether competition in the intrastate long-distance market is economically feasible. p. 261.

2. PARTIES, § 18 — Intervenors — Late intervention — Grounds for allowing.

[N.H.] Pursuant to RSA 541-A:17 II, the commission may permit late intervention where the intervention would be in the interests of justice and would not impair the orderly and prompt conduct of the proceedings. p. 261.

PARTIES: As previously noted and as changed in this order.

By the COMMISSION:

REPORT ON SCOPE AND
INTERVENTION

The following report discusses two procedural issues: 1) the scope of the proceeding, and 2) the motions for late intervention of U.S. Sprint and MCI Telecommunications Corporation. It sets forth a procedural history, summarizes the positions of the parties, establishes the scope of the proceeding and grants the late interventions.

I. *Procedural History*

On December 4, 1987, Long Distance North of New Hampshire, Inc. (LDN) petitioned for authority to do business as a reseller of intra-state long distance telephone service in New Hampshire. By an order of notice dated March 7, 1988, the commission opened an investigation of the petition. It found that RSA 374:26 requires a hearing and a finding that the engaging in business as a public utility is in the public good. We also determined that, as a prerequisite to this finding of public good, we must decide whether the resale of all telephone services is in the public interest. Therefore, we opened a generic docket to consider whether and how the commission would regulate, deregulate, or otherwise allow resale and shared tenant telephone service. We consolidated this generic docket with the investigation of whether LDN should be permitted to conduct business as a public utility. We required all franchised New Hampshire telephone utilities to be parties and scheduled a prehearing conference for April 6, 1988.

By Report on Prehearing Conference and Order No. 19,067 (April 19, 1988), the commission established a procedural schedule. The schedule required the parties to file legal memoranda on the scope of the proceeding on April 20, 1988 and reply legal memoranda on May 2, 1988. Granite State Telephone, Inc. (Granite State); Dunbarton Telephone Company (Dunbarton);

Merrimack County Telephone Company (Merrimack); Wilton Telephone Company (Wilton); New England Telephone (NET); Contel of New Hampshire, Inc. (Contel-N.H.); Contel of Maine, Inc. (Contel-Me.) Long Distance North of New Hampshire, Inc. (LDN); U.S. Sprint Communications Company (Sprint); and the staff of the New Hampshire Public Utilities Commission (staff) filed timely memoranda. On May 13, 1988, MCI Telecommunications Corporation (MCI) filed a legal memorandum. On May 12, 1988, Dunbarton, Granite State, Merrimack, and Wilton (the

independents) collectively filed a reply memorandum. On May 12, 1988, LDN filed reply comments and on May 18, 1988, the independents filed a response to LDN's reply comments.

On April 20, 1988, Sprint filed a motion for late intervention. On May 13, 1988, MCI filed a motion for late intervention. On May 6 and May 27, LDN filed objections to Sprint and MCI motions respectively. On May 25, 1988, Sprint responded to LDN's objection.

For the purpose of considering this case, it is also necessary for us to take notice of our decision in another commission docket — *Long Distance North of New Hampshire, Inc. v. New England Teleph. and Teleg. Co.*, DE 87-192, Order No. 18,872 (Oct. 12, 1987) (72 NH PUC 485). On October 6, 1987, LDN filed a petition requesting an order amending NET's tariff, NHPUC No. 75 § 10.2.1(a). The amendment would delete all language prohibiting the resale of wide area telephone service (WATS) to allow the petitioner to provide this service. We determined that the petition was not ripe for consideration because the petitioner had not asked for or received permission from the commission to operate as a public utility.

II. *Positions of the Parties*

This section will be divided into a discussion of the scope and a discussion of the requests for intervention. The following subsections state a summary of the positions as expressed by the parties.

A. Scope

1. Long Distance North

LDN argues that the proceeding should conform to the scope which was set forth in the commission's order of March 7, 1988.

LDN posits that resale of long distance and shared tenant services are likely to raise similar policy and economic issues, therefore, they should be addressed in the same docket. According to LDN, this scope will conserve the commission's resources by avoiding a piecemeal approach to the subject matter. LDN avers that the commission should not investigate facilities-based competition because this investigation would raise very different and complex public policy issues. LDN agrees with NET's proposed bifurcation of the proceeding (discussed below).

In its original petition, p.1, LDN states that it asked “for a franchise to operate as a reseller of intrastate long distance telephone service throughout the state of New Hampshire.” In its May 12, 1988 reply comments, LDN states that, while it made special mention in its petition of the resale of MTS, that it intends to resell wide area telecommunications services (WATS) when

tariff barriers are removed. It also states that its petition covers the resale of all intrastate long distance services.

2. Granite State Telephone Inc.; Dunbarton Telephone Company; Merrimack County Telephone Company; and Wilton Telephone Company

The independents argue that the commission should investigate only the specific issues raised by the LDN petition. They opine that a proceeding that would explore resale and shared tenant services raises several important generic public utility law questions about franchises and competition that the commission needs legislative guidance to address.

Such a docket, they aver, would also

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raise intrastate long distance cost recovery issues. They contend that these issues cannot be investigated before the cost of service methodologies are developed in docket DR 85-182.

The independents state that LDN petitioned for permission only to be certified as a reseller of NET's message telecommunications service (MTS). They aver that LDN did not request permission to resell WATS, and that the relief should be confined to that requested in the petition.

The independents take the position that the generic issues regarding the interrelation between toll carriers and local exchange carriers are not raised by the petition. In addition, they argue that the resale of MTS will not affect the local exchange carriers' compensation for long distance calls.

They admit that the petition raises certain technical issues concerning extended area service, private line service, and foreign exchange service which should be considered in this proceeding. According to the independents, resellers may utilize these services to originate intrastate long distance calls in a way that does not properly compensate the originating carrier.

3. New England Telephone and Telegraph Company

NET does not object to the original scope of the proceeding. It recommends that the proceeding be divided into the following two phases. Phase one should address the nature and effects of resale, including the LDN petition, and whether resale should be allowed. If resale is permitted, phase one should address the appropriate regulation of resellers and competing local exchange companies. Phase two would consider the structure, rates and rate design for an intrastate access tariff.

4. Contel

Contel argued that basic fairness requires the commission to consider the LDN petition in a specific proceeding. Thus, the scope of the proceeding should be 1) the need for the service; and 2) the ability of the petitioner to provide service (the so-called fitness issue). It takes the position that the commission should open a separate generic docket to adopt rules and regulations for competitive services. It contends that if LDN is authorized to do business it should be given interim authority to provide service in an unregulated environment, subject to prospective modification by orders in the generic docket.

5. MCI

MCI argues that commission should investigate whether and how the commission should regulate, deregulate, or otherwise allow resale services, shared tenant services and facilities-based competition. In MCI's opinion, this scope would be administratively efficient, especially if MCI and other inter-exchange carriers decide to enter the New Hampshire market in the near future. Thus, the public interest would be served by this broader scope because, in order for New Hampshire consumers to experience the benefits of new technology and services, the commission must resolve these issues. In addition, it asserts that the proceeding should have a broad enough focus so that relevant competition issues can be addressed, such as:

1) Application requirements for new entrants;

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2) Rules for the disposition of applications;

3) Tariff filing requirements, if any, and procedures for the approval of tariff changes for non-dominant providers;

4) Requirements for cooperation with commission investigations and orders; and

5) Requirements for compliance with service standards, if any.

6. Sprint

Sprint argues that the public interest would be furthered by expanding the scope of this proceeding to encompass all issues relevant to the provision of competitive toll services. This scope, it reasons, is necessary to ensure that New Hampshire consumers will reap the full benefits of toll competition.

In addition, it states that the commission's limited resources would be best utilized by this scope. It reasons that many of the issues in a resale docket and a facilities-based docket are related; thus, the expanded scope would avoid duplicative proceedings.

7. Staff

The staff argues that the commission should consider all types of facilities and non-facilities based resale and competition in this docket. The staff asserts that in order for the commission to decide to allow LDN to be a utility, it must 1) decide that resale of telephone service is a utility service, 2) decide whether it has authority to grant competing franchises, and 3) find that, under the economic and societal policies and enabling statutes of the commission, the granting of competing franchises is in the public interest. The commission, the staff alleges, cannot make these decisions without considering all the rights of all possible competitive telecommunications providers and the overall effect on the ratepayers. The staff contends that the commission should consider shared tenant services (STS) because STS providers may resell toll services.

It recommends that the commission divide its consideration of the docket into three phases. These phases would consider, but not be limited to, consideration of the following issues.

1) Phase One

a) Definitions of the various types of

competitive services
b) Barriers to market entry
c) Price elasticity
d) Commission authority to regulate
e) Commission authority to allow competition
f) Commission authority to relax regulation or deregulate
g) Antitrust considerations
h) Equal access
i) Data concerning existing and

potential bypass and arbitrage and the commission's ability to prevent it

j) Data on the percent capacity of

local exchange company operation; current growth rates, overall and by service; analysis of the effect of resale on demand

k) Resale and shared tenant service technologies
l) Depreciation — the effect of depre-

ciation of older technology switches on telephone companies ability to compete with resellers

Page 259

2) Phase Two — after NET cost study analysis in DR 85-182

a) Cost based pricing and the effect on universal service
b) Economic versus uneconomic bypass

3) Phase Three — Policy issues requiring resolution in both this docket and DR 85-182

a) Rate design
b) Access charges and pooling
c) Relaxed regulation
d) Timing of competitive entry

B. Intervention

1. Sprint

Sprint moves for leave to intervene under N.H. Admin. Code Puc 203.02(b). Sprint would like an opportunity to provide intrastate telecommunications services in New Hampshire if a regulatory structure for toll competition is developed in this proceeding. Since the commission will investigate the rules for market entry by competitive providers, Sprint alleges that it has a substantial interest in the outcome of this case and that no other party will adequately represent Sprint's interests. It contends that it was not directly notified of the commission's prehearing

conference. Sprint asserts that its participation is in the interests of justice, would not impair the orderly and prompt conduct of the proceeding, and would assist the development of a complete record.

In response to the objection of LDN (set forth below), Sprint counters that it does not need to have an application for intrastate authority pending before the commission because this docket is a generic proceeding. Sprint alleges that it does not intend to delay the petition investigation. It suggests severing the proceeding on the LDN petition from the generic intrastate competition docket.

2. MCI

MCI moves to intervene. MCI is interested in the development of intrastate telecommunications competition in New Hampshire and has an interest in the commission's regulation or deregulation of that market. Given the scope originally articulated by the commission, MCI claims that it has a substantial interest in the outcome of the case and that its interest will not be adequately represented by other parties. MCI states that it was unaware of the commission's prehearing conference. It contends that its intervention would be in the interest of justice, would not impair the conduct of the proceeding, and would allow for a more complete investigation and record.

3. Long Distance North

LDN requests that the commission deny Sprint's and MCI's motions to intervene. It takes the position that Sprint's and MCI's motions do not show that their rights, duties, privileges, immunities, or other substantial interests may be affected by the proceeding. Sprint and MCI are not resellers and have no applications pending. LDN avers that Sprint and MCI seek to expand the proceeding beyond its proper scope. Therefore, LDN claims that MCI's and Sprint's intervention will unreasonably delay the petition investigation and impair the interests of justice, and the orderly and prompt conduct of the proceeding.

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III. *Commission Analysis*

[1] The commission finds that it cannot determine the appropriate scope of the proceeding at this time. In light of the circumstances outlined below, we will defer a decision on the scope of the docket until after the first quarter of 1989. MCI and Sprint will be allowed to intervene in this proceeding.

The commission is in the process of conducting a cost of service study for NET. *Re New England Teleph. & Teleg. Co.*, DR 85-182. On June 1, 1988, NET filed the results of several embedded cost studies pursuant to our order no. 18,977 (73 NH PUC 23). While the supporting documents for these studies have not yet been filed, we expect that they will be voluminous. Our staff has informed us that it will complete analyzing the results and the supporting documents by March 1989.

Given this time line, we do not find it appropriate to investigate the outstanding petition or any of the proposed scopes at this time. Until the staff has analyzed this information, it will not be in a position to advise us about such issues as whether competition is economically feasible or

to recommend access charges applicable to competitive services. To insure a prompt investigation of the underlying petition we will require the staff to file a scope proposal that takes into consideration this analysis on April 1, 1989.

[2] Pursuant to RSA 541 A:17 II., the commission may permit late interventions where the intervention would be in the interests of justice and would not impair the orderly and prompt conduct of the proceedings. While Sprint and MCI do not have certification petitions before the commission, it is obvious that they have a substantial interest in the outcome of this proceeding. The reputation of Sprint and MCI as providers of intrastate and interstate telecommunications services is well known. If they say they are interested in an opportunity to compete in New Hampshire, we recognize that we have a responsibility to seriously consider the implications of that interest. The docket was still in its infancy when MCI and Sprint sought to intervene. For these reasons, we will allow the intervention because it is in the public interest and will not impair the prompt conduct of the proceeding.

Our order will issue accordingly

ORDER

Upon consideration of the foregoing Report on Scope and Intervention, which is made a part hereof, it is hereby

ORDERED, that the decision on the scope will be deferred until after April 1, 1989; and it is

FURTHER ORDERED, that MCI Telecommunications Corporation and U.S. Sprint shall be granted full party status in this proceeding

By order of the Public Utilities Commission of New Hampshire this twenty-eighth day of June, 1988.

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NH.PUC*06/29/88*[52015]*73 NH PUC 261*New Hampshire Electric Cooperative, Inc.

[Go to End of 52015]

73 NH PUC 261

Re New Hampshire Electric Cooperative, Inc.

DE 88-061
Order No. 19,115

New Hampshire Public Utilities Commission

June 29, 1988

ORDER granting license to place and maintain electric distribution line.

Page 261

ELECTRICITY, § 6 — Wires and cables — Grant or refusal — Authorization for distribution line.

[N.H.] A license was granted for the placement of an electric distribution line across state-owned land where said line was determined to be necessary to meet the requirements of service to the public.

By the COMMISSION:

ORDER

WHEREAS, on April 14, 1988, the New Hampshire Electric Cooperative, Inc. (NHEC) filed with this Commission, a petition pursuant to RSA 371:17 for a license to place and maintain an electric distribution line by replacing an existing line through Hamel State Forest with a new line along the edge of forest abutting Meredith Center Road in Laconia, New Hampshire; and

WHEREAS, after having been properly advertised in accordance with N. H. Administrative Rules PUC 203.01, a hearing was held before the Commission at its offices at 8 Old Suncook Road, Concord, New Hampshire at ten o'clock in the forenoon on the twenty-fifth day of May, 1988; and

WHEREAS, the existing line, constructed in 1940 pursuant to commission license D-E2052, has deteriorated and needs rebuilding; and

WHEREAS, it is preferred to build a new 7,200 V line along the edge of forest and remove the old, existing line; and

WHEREAS, upon completion of the new line and removal of the old line, any rights the NHEC may have or have had to the old right-of-way will be completely extinguished; and

WHEREAS, upon cessation of use of the new right-of-way along Meredith Center Road, it shall revert to the land owner; and

WHEREAS, in order to meet the requirements of service to the public, NHEC must maintain electric distribution lines across certain state lands, which lines are an integral part of its electric system; and

WHEREAS, the commission finds such public land crossing necessary for the company to meet its obligation to serve customers within its authorized franchise area, thus it is in the public good; and

WHEREAS, by letter filed May 2, 1988, the Department of Resources and Economic Development notified this commission of its approval in granting a permanent license subject to the conditions as detailed in the petition; it is

ORDERED, that authority be granted, pursuant to RSA 371:17 et seq, to the New Hampshire Electric Cooperative, Inc. to maintain and operate said 7200 V distribution line across public land in the City of Laconia, 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.

By order of the Public Utilities Commission of New Hampshire this twenty-ninth day of June, 1988.

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NH.PUC*06/29/88*[52016]*73 NH PUC 263*Granite State Electric Company

[Go to End of 52016]

73 NH PUC 263

Re Granite State Electric Company

Additional party: Mary Hitchcock Memorial Hospital

DR 88-89
Order No. 19,117

New Hampshire Public Utilities Commission

June 29, 1988

ORDER approving interruptible electric service contract.

RATE § 321 — Electricity — Interruptible service — Special contract.

[N.H.] The commission approved a special contract whereby an electric utility would provide interruptible service to a hospital in a manner consistent with the utility's previously approved cooperative interruptible service program.

By the COMMISSION:

ORDER

WHEREAS, Granite State Electric Company (company) filed with the commission on June 13, 1988 its Special Contract No. 1, said contract detailing the terms and conditions under which the company would provide interruptible service to Mary Hitchcock Memorial Hospital; and

WHEREAS, the terms and conditions of the contract are consistent with the company's Cooperative Interruptible Service (CIS) — 3 program which was approved by the commission in Order No. 18,987 on January 22, 1988; and

WHEREAS, the commission finds that issuance of said contract is in the public good; it is therefore

ORDERED, that Special Contract No. 1 be, and hereby is, approved for effect June 13, 1988.

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

June, 1988.

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[Go to End of 52018]

73 NH PUC 269

Re Fuel Adjustment Clause

Applicants: Granite State Electric Company, Concord Electric Company, and Exeter and Hampton Electric Company

DR 88-79
Order No. 19,122

New Hampshire Public Utilities Commission

July 1, 1988

ORDER revising the fuel adjustment clause rates of three electric utilities.

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1. AUTOMATIC ADJUSTMENT CLAUSES, § 52 — Fuel adjustment clause revision — Estimates and forecasts — Electric utility.

[N.H.] The fuel adjustment clause rate of an electric utility was revised to reflect forcasted fuel prices, sales, line loss, company electric use, and load. p. 270.

2. AUTOMATIC ADJUSTMENT CLAUSES, § 49 — Fuel adjustment clause revisions — Electric utilities.

[N.H.] The fuel adjustment clause rates of two electric utilities were revised to reflect qualifying facility purchases, sales forecasts, fuel cost estimates, and lost, unaccounted for and company use electricity. p. 270.

3. AUTOMATIC ADJUSTMENT CLAUSES, § 10 — Energy cost clauses — Direct costs — Electric.

[N.H.] In fuel adjustment clause proceedings for three electric utilities the commission approved various fuel surcharge credits for the

six-month period from July to December, 1988. p. 270.

APPEARANCES: For Concord Electric and Exeter & Hampton Electric Company, Elias G. Farrah, Esquire; for Granite State Electric Company, Philip Cahill, Esquire.

By the COMMISSION:

REPORT

The Public Utilities Commission held a duly noticed hearing at its office in Concord on June 15, 1988 to review the Fuel Adjustment Clause (FAC) filings of Concord Electric Company, Exeter & Hampton Electric Company and Granite State Electric Company for the second half of 1988.

I. *GRANITE STATE ELECTRIC COMPANY*

[1] Granite State Electric Company (Granite State) made its July — December 1988 filing for a FAC and an Oil Conservation Adjustment rate ("OCA") on June 1, 1988. Granite State had a FAC surcharge of $0.299 per 100 KWH in effect for January 1, 1988 through June 1, 1988 and an OCA rate credit of ($0.003) per 100 KWH in effect for the same period.

The rates requested on June 1, 1988 are $0.244 per 100 KWH for FAC and $0.042 per 100 KWH for OCA. In addition, Granite State filed revised Qualified Facilities tariff rates.

Issues raised during the 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 1988;

3. line loss and company electric use; and

4. the effect demand side planning has on Granite State's load forecast.

According to a Granite State witness, the decrease in the FAC was primarily due to an overcollection in the previous period FAC. The fuel costs are forecasted to remain relatively stable as compared to the first half of 1988.

One further issue was raised during the hearing. This issue concerns Granite State's affiliate, New England Power Company (NEPCO) (Granite States major source of energy) contract with a General Electric (GE) plant in Lynn, Massachusetts. This contract is an agreement between the two parties whereby GE surplus electricity generated at the GE plant will be made available to NEPCO for a cost indexed at 87% of NEPCO's peak and off-peak incremental fuel cost. This cost appears to be the most expensive source of energy NEPCO has available. This contract and other contracts of this nature will be addressed in the next FAC docket (January — June 1989). Therefore, the company should file its testimony accordingly.

Based on the evidence provided, the commission will approve the filed FAC rate of $0.244 per l00 KWH, the OCA rate of $0.042 per 100 KWH, and the revised QF rates as filed.

II. *CONCORD ELECTRIC COMPANY AND EXETER & HAMPTON ELECTRIC COMPANY*

[2, 3] On June 1, 1988, Concord Electric Company ("Concord") and Exeter & Hampton Electric Company ("Exeter & Hampton") (collectively the "companies") filed revised FAC rates for the period July — December 1988. On June 15, 1988 the companies presented three witnesses,

Steven E. Oltmans, George R. Gantz and Keith H. Durand.

Concord's FAC in effect during the period January 1, 1988 through June 30, 1988 was a credit of ($0.827) per 100 KWH and Exeter and Hampton's FAC was a credit of $(0.836) per 100 KWH during the same period. On June 17, 1988 these two companies filed revised FAC surcharge credits of ($0.906) and ($0.844) per 100 KWH for Concord and Exeter & Hampton respectively.

On June 1, 1988 the companies filed testimony and exhibits which supported the proposed revision to their respective FAC surcharge credits.

On June 17, 1988 the companies filed the above mentioned revised FAC rates which reflect updated fuel costs. The revisions reduced the FAC from the originally filed surcharge credits of ($0.856) per 100 KWH and ($0.814) per 100 KWH for Concord and Exeter & Hampton respectively.

The following issues were discussed during the June 15, 1988 hearing:

1.The overall effect on rates when both the Purchase Power Adjustment Clause (PPAC) and FAC approved in rates;

2. Qualified facility (small power producer) purchases, specifically Ultra Power and the unscheduled outage;

3. Sales forecasts for the companies;

4. Estimated cost of fuel; and

5. Lost and unaccounted for KWH and Company use.

Both companies state the decreases in FAC over the current period results from the fact that the present fuel charge rate contains an overcollection of prior period rates (Jan.-June 1988) in Unitil Power Corp.'s (the companies major source of power) wholesale rates. Additionally the companies project a shift in their load characteristics. This shift will cause a reduction in marginal fuel costs. The FAC is further reduced because the Ultra Power generating units (which Unitil Power has an entitlement) had an unscheduled outage. The replacement energy cost of the unit's generation was less expensive than the projected energy cost of said unit.

In testimony a witness for the companies provided information which displayed an overall increase in rate when the PPAC (DR88-81) and the FAC were aggregated. The fact that the rates are increase in a period where energy costs have throughout New England are either decreasing or remaining constant concerns us. We therefore will require an explanation for the increase in the companies, next FAC and PPAC filing (January — June 1989).

Based on the evidence provided, and in consideration of the continuing investigation of the issues concerning the Elektrisola, Inc./Unit Power contract discussed in our Report and Order in DR 88-81 (PPAC), the commission will approve the filed rate of ($0.906) per 100 KWH and ($0.844) 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 11th Revised Page 20A of Concord Electric Company tariff, NHPUC No. 10 — Electricity, providing for a fuel surcharge credit of ($0.897) per 100 KWH for the months of July through December, 1988, be, and hereby is, permitted to go into effect on July 1, 1988; and it is

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FURTHER ORDERED, that 37th Revised Page 19A of Exeter & Hampton Electric Company tariff, NHPUC No. 15 — Electricity, providing for a fuel surcharge credit of ($0.836) (per 100 KWH) for the months of July through December, 1988, be, and hereby is, permitted to go into effect July 1, 1988; and it is

FURTHER ORDERED, that 22nd Revised Page 57 of Granite State Electric Company tariff, NHPUC No. 10 — Electricity, providing for an oil conservation adjustment of $.042 per 100 KWH for the months of July through December, 1988, be, and hereby is, permitted to go into effect for July 1, 1988, and it is

FURTHER ORDERED, that 26th Revised Page 30 of Granite State Electric Company tariff, NHPUC No. 10 — Electricity, providing for a fuel surcharge of $0.244 per 100 KWH for the months of July through December 1988, be, and hereby is, permitted to go into effect for July 1, 1988; and it is

FURTHER ORDERED, that 10th 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, 1988.

The above noted rates may be adjusted by a factor of approximately 1% depending upon the utility's classification in the Franchise Tax Docket, DR 83-205, Order No. 15,624.

By order of the Public Utilities Commission of New Hampshire this first day of July, 1988.

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NH.PUC*07/05/88*[52019]*73 NH PUC 272*Southern New Hampshire Water Company, Inc.

[Go to End of 52019]

73 NH PUC 272

Re Southern New Hampshire Water Company, Inc.

DR 86-131, DR 88-055
Order No. 19,123

New Hampshire Public Utilities Commission

July 5, 1988

ORDER lengthening time period for recovery of water utility rate surcharges.

REPARATION, § 41 — Method of payment — Period of reparation — Water utility.

[N.H.] Where a water company had delayed commencing recoupment of the difference between temporary and permanent rates, resulting in an inordinately higher rate impact on the utility's customers than would have occurred if the recoupment had commenced when intended, the utility was ordered to collect the remaining surcharges over an 18-month period rather than over the previously authorized six-month period, in order to lessen the burden on the affected customers.

By the COMMISSION:

ORDER

Southern New Hampshire Water Company, Inc. (Southern) having filed on June 20, 1988, a motion to amend and change Order No. 18,568 in Docket DR 86-131 (72 NH PUC 58) to reduce the rates and surcharges presently being charged Southern's customers in Smythe Woods; and

WHEREAS, Southern did not commence recoupment of the difference between temporary and permanent rates in said docket on September 3, 1986, as authorized in Order No. 18,568, but rather commenced recoupment in January, 1988; and

WHEREAS, said delay in commencing recoupment resulted in inordinately higher rate impact on Southern's customers than would have occurred if the recoupment had commenced as intended by the commission on September 3, 1986; and

WHEREAS, the amount of the resultant surcharge has been burdensome to consumers in the Smythe Woods system; and

WHEREAS, the commission finds that collecting the remaining two quarters of approved surcharges over a six quarter (18 months) period, rather than the presently authorized six month period, is a reasonable way to lessen the burden on the Smythe Woods consumers and therefore is in the public good; it is

ORDERED, that Southern's motion to amend Order. No. 18,568 to permit an eighteen (18) month recovery of the remaining surcharge for the time period of September 3, 1986, to September 1, 1987, is hereby granted.

By order of the Public Utilities Commission of New Hampshire this fifth day of July, 1988.

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[Go to End of 52020]

73 NH PUC 273

Re Concord Electric Company

Additional party: Exeter and Hampton Electric Company

DR 88-81
Order No. 19,124

New Hampshire Public Utilities Commission

July 7, 1988

ORDER authorizing revisions to the purchase power adjustment clauses of two electric utilities.

AUTOMATIC ADJUSTMENT CLAUSES, § 13 — Purchased power — Disallowed costs — Retail electric utilities.

[N.H.] Costs associated with a contract entered without commission approval whereby an electric utility, Unitil Power Corporation, would reimburse a customer for shifting its load to off peak periods were disallowed, pending further investigation, from the purchase power adjustment clauses of two retail electric utilities that purchased all of their energy from UNITIL.

APPEARANCES: Elias G. Farrah, Esquire, for Concord Electric Company and Exeter & Hampton Electric Company; Daniel D. Lanning and Mark Collin for staff.

By the COMMISSION:

REPORT

On June 1, 1988 Concord Electric Company and Exeter & Hampton Electric Company ("Concord", "Exeter & Hampton" or collectively the "companies") filed revised purchase power adjustment charges (PPAC) effective July 1, 1988. On May 26, 1988 the commission issued an order of notice scheduling a hearing on June 15, 1988.

On June 17, 1988 the companies revised their PPAC filing from $1.517 per 100 kwh and $1.54 per 100 kwh to $1.432 per 100 kwh and $1.436 per 100 kwh for Concord and Exeter & Hampton respectively.

The June 15, 1988 hearing on the PPAC was heard along with the companies FAC filings (DR 88-79). The companies presented three witnesses in said hearing. Testimony by the companies' witness revealed an increase in the companies PPAC rates from the currently effective rates of $.00993/KWH and $.00985/KWH

for Concord and Exeter & Hampton respectively. The increase in purchase power is caused by increased wholesale rates from the companies' sole supplier of energy, Unitil Power Corporation (Unitil Power). Unitil Power's increase in rates is caused by a change in its Prior

Period Reconciliation adjustment, increase in demand costs from purchase power suppliers and an increase in administrative and general expense. These increases were offset by an outage in the Ultra Power units where replacement energy costs are less than the cost of power from said units.

During the hearing a witness for the companies provided testimony concerning demand side planning. The witness provided information on future rate design proposals including an interruptible rate expected to be available in November 1988. The witness further stated that Unitil Power had entered into a contract with one of the companies retail customers (Elektrisola, Inc.) in April 1988 whereby said customer will be reimbursed for shifting its load to an off-peak period. UNITIL did not notify the commission of this arrangement and did not seek or receive commission approval therefore.

Pursuant to a request by the hearing examiner at the June 15 hearing, the companies submitted a copy of the Elektrisola contract on June 24, 1988. We intend to review the contract before determining what further action may be appropriate, including whether or not the contract's related costs should be passed on to ratepayers. We will investigate the matter in accordance with, *inter alia*, RSA 374:4 and 374:7. Thus, we will disallow the costs applicable to this contract until the investigation is complete. The companies will refile the PPAC as necessary reflecting an adjustment to the filed rate.

Our order will issue accordingly.

ORDER

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

ORDERED, that Concord Electric Company's 8th revised page 19th of its tariff NHPUC No. 10 — Electricity, providing for a Purchase Power Adjustment charge of $1.432 per 100 kwh be, and hereby is, rejected; and it is

FURTHER ORDERED, that Exeter & Hampton Electric Company's 8th revised page 18 of its tariff NHPUC No. 15 — Electricity, providing for a Purchase Power Adjustment charge of $1.436 per 00 kwh be, and hereby is rejected; and it is

FURTHER ORDERED, that Concord Electric Company and Exeter & Hampton Electric Company file revised signed tariff pages reflecting Purchase Power Adjustment Charges in accordance with the attached report.

By order of the Public Utilities Commission of New Hampshire this seventh day of July, 1988.

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NH.PUC*07/08/88*[52017]*73 NH PUC 263*Public Service Company of New Hampshire

[Go to End of 52017]

73 NH PUC 263

Re Public Service Company

# of New Hampshire

DR 88-65
Order No. 19,121

New Hampshire Public Utilities Commission

July 8, 1988

ORDER approving electric utility's Energy Cost Recovery Mechanism rate.

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1. AUTOMATIC ADJUSTMENT CLAUSES, § 10 — Energy cost clauses — Direct costs — Fuel — Purchased power.

[N.H.] The Energy Cost Recovery Mechanism (ECRM) is that portion of an electric utility's customer rates designed to recover fuel and purchased power costs, and the ECRM is adjusted by the commission on a semiannual basis, using a calculation based on forward-looking energy costs combined with an adjustment related to underrecovery or overrecovery of those costs in the prior period. p. 266.

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

[N.H.] The Energy Cost Recovery Mechanism for an electric utility is tracked using accrual accounting, so that when the utility provides electric service to a customer and reads

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the customer's meter, the utility records the revenue regardless of when the cash payment is actually received; similarly, the utility purchases and uses fuel to provide electricity and records the expense when the fuel is actually burned, not when the fuel costs are actually paid. p. 266.

3. AUTOMATIC ADJUSTMENT CLAUSES, § 10 — Direct costs — Energy cost recovery mechanism — Accounting methods — Effect of utility bankruptcy.

[N.H.] In determining the appropriate rate-making treatment for identified fuel and purchased power costs that remained unpaid due to an electric utility's bankruptcy filing, the commission found that no change to the accrual accounting based mechanism was necessary to set a just and reasonable Energy Cost Recovery Mechanism rate. p. 267.

4. AUTOMATIC ADJUSTMENT CLAUSES, § 57 — Billing, collections, and adjustments — Energy cost recovery mechanism — Effect of utility bankruptcy — Refunds.

[N.H.] In order to maintain all rate-making options for future treatment of an electric utility's unpaid fuel and purchased power costs, the commission required an electric utility in bankruptcy to maintain customer records on usage and addresses for customers who received any bills based upon the Energy Cost Recovery Mechanism rates in effect from January 1 to June 30, 1988; the records shall be maintained in a manner so that should the commission order the utility to provide refunds related to such bills, the utility could, with least possible cost, delay and disruption, provide such a refund. p. 267.

APPEARANCES: Eaton W. Tarbell, Jr., Esquire of Sulloway, Hollis and Soden, and Gerald M. Eaton, Esquire for Public Service Company of New Hampshire; Joseph Rogers, Esquire for the Consumer Advocate's Office; Frederick J. Schmidt, Esquire and Rose Duggan, Esquire of Brown, Olson and Wilson for Bio Energy Corporation, Whitefield Power & Light Company, Alexandria Power Associates, TIMCO, Inc., Bridgewater Power Company LP, Hemphill Power & Light Company, Pinetree Power, Inc. and Pinetree Power-Tamworth, Inc.; Martin C. Rothfelder, Esquire for NHPUC Staff.

By the COMMISSION:

REPORT

This docket was initiated by a commission order of notice issued on May 26, 1988. On May 26, 1988, Public Service Company of New Hampshire (PSNH), a public utility providing electricity in the State of New Hampshire, filed a revision to its ECRM rate for the period July through December 1988. This rate represents no change from the prior period ECRM rate of $3.249/100 KWH.

Duly noticed hearings were held at the commission's office in Concord on June 16 and 17, 1988. At the hearing the commission granted interventions of Bio Energy Corporation, Whitefield Power and Light Company, Alexandria Power Associates, TIMCO, Inc., Bridgewater Power Company, L.P., Hemphill Power and Light Company, Pinetree Power, Inc., and Pinetree Power-Tamworth, Inc. PSNH presented testimony of eleven (11) witnesses. Staff presented one witness.

A number of offsetting factors occurred in calculating the proposed ECRM rate which aggregated to a component that is the same as was in effect during the January-June 1988 period. PSNH estimated increasing oil prices and less hydro electric generation during the July-December 1988 ECRM period. This was

offset by a decrease in the reconciliation adjustment for the second half of 1988 compared to the first half of 1988 and an increase in low energy cost generation from the Merrimack units.

Prior to the hearing staff, PSNH and the intervenors held a prehearing conference on June 13, 1988 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 projected price of oil;

2. The cost of power produced by Qualified Facilities (QF) recovered through ECRM;

3. The filing by PSNH for protection under Chapter 11 of the U.S. Bankruptcy Code and its relationship to certain unpaid fuel and purchased power costs;

4. Coal contract negotiations for Merrimack and Schiller Generating Units;

5. Demand side planning and its effect on PSNH's short term load forecast;

6. Energy availability and PSNH's efforts to meet estimated demands; and

7. The appropriate interest rate for over/under collection under ECRM rates.

Several of these items merit further discussion.

I. *Unpaid Fuel and Purchased Power Costs*

A. *Introduction*

On January 28, 1988, PSNH filed a petition for protection under Chapter 11 of the U.S. Bankruptcy Code. Due to that filing and the restrictions of the Bankruptcy Code, PSNH has not paid $9,348,267.22 in billings for fuel and purchased power that are normally recovered through the Energy Cost Recovery Mechanism (ECRM). $8,413,440 of these costs are appropriately considered retail (New Hampshire jurisdictional) costs that are associated with ECRM. PSNH has included these costs in its proposed ECRM component for the period July through December, 1988 as part of the prior period (January through June, 1988) reconciliation of estimates to actual energy costs and thereby proposes no change despite the nonpayment of these costs. The commission herein finds that ratemaking treatment appropriate for the current ECRM rate, but will consider additional appropriate ratemaking proposals at the time the bankruptcy court resolves the payment of those costs.

B. *Positions of the Parties*

The PUC staff took no position on the issue but presented testimony in this matter which presented the following three options for commission consideration:

Option #1:

Withhold recovery of the unpaid costs until the bankruptcy court makes a final decision. No costs would be paid by ratepayers until decisions on such payments are made. No carrying costs are needed because neither PSNH nor the customer has an outlay of cash.

Option #2:

Allow recovery of the unpaid costs in

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the current ECRM and record the payments made by customers as a liability. The liability should accumulate carrying costs until PSNH actually pays its obligation for the energy costs. This in effect would have the appearance of a loan from ratepayers to PSNH. Following a decision by the Bankruptcy Court, the portion of this liability which is forgiven should be refunded along with the accumulated carrying cost on all advanced funds.

Option #3:

Make no change to the ECRM calculation. Under this option PSNH would receive payment through rates to cover these unpaid amounts while ratepayers would not receive carrying costs associated with the advanced payment of those amounts.

The consumer advocate, in a brief filed on June 24, 1988, takes a position that only Option #1 listed above is lawful due to the requirements of RSA 378:7, the fourteenth amendment to the U.S. Constitution, and the New Hampshire Constitution, Part 1, Article 12. PSNH takes the position that only Option #3 is permitted under the Bankruptcy Code. Any other option would, according to PSNH, discriminate against PSNH due to its status as a bankrupt company and would therefore violate the bankruptcy code.[1(22)] No other party took a position on this issue.

C. *Findings of Fact*

[1] ECRM is the portion of PSNH customer rates designed to recover fuel and purchased power costs. Under procedures provided by the commission, the commission adjusts the ECRM rate semi-annually. Such adjustment is usually based on forward-looking energy costs combined with an adjustment related to underrecovery or overrecovery of those costs in the prior period. The adjustment has also included incentive features to encourage various positive actions by PSNH.

[2] The commission finds that the ECRM mechanism has in the past generally relied upon accrual accounting. As staff witness Lanning stated, under accrual accounting:

> revenues are recognized in the period in which [they are] earned and expenses are matched to revenues. This method of accounting gives no consideration to when cash is received or disbursed. Effectively, the records for an entities [sic] business activities are normalized. Net Income, therefore, reflects the difference of revenue earned in a specific period and expenses incurred in earning said revenue.

Direct testimony of Daniel D. Lanning, exhibit 27. More specifically, when PSNH provides electric service to a customer and reads the customer's meter, the company records the revenue regardless of when the cash payment is actually received. Similarly, PSNH purchases and uses fuel to provide electricity. The company records the expense when this fuel is burned — not when the fuel costs are actually paid.

The ECRM ratemaking mechanism has traditionally developed an ECRM rate as part of a customer's overall rate based upon data from PSNH's accrual accounting. The unpaid purchased power and fuel expenses at issue here of approximately 8.4 million dollars were appropriately reflected in the company's books under accrual accounting procedures regularly

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followed by the company. There is, however, substantial uncertainty over payment of these fuel and purchased power costs — both as to whether such payments would be made and, if so, when. ECRM was developed on the assumption that PSNH would make payments for fuel and purchase power in a timely manner. Thus, the uncertainty over payment in this situation was not anticipated when developing the ECRM mechanism that has been used in the past.

D. *Commission analysis*

Pursuant to RSA 378:3-a, the ECRM portion of PSNH customer rates is designed to cover the costs of fuel for generating power and the costs of purchasing electric power by the utility. Neither New Hampshire statutes nor the commission's prior orders restrict the commission to

handling the ratemaking treatment of fuel and purchased power in any particular manner. While PUC rule 307.04 requires PSNH to maintain accounts on an accrual basis,[2(23)] this rule does not dictate any particular ratemaking treatment of that information. *See Re Public Service Co. of New Hampshire, PSNH,* docket no. DR 86-122, REPORT REGARDING PSNH MOTION FOR REHEARING AND ORDER NO. 18,775, at 13 (July 13, 1987) (73 NH PUC 330). There is significant regularity to the commission's actions under ECRM, for the parties and the commission usually follow past stipulations and agreements on how ECRM should operate. Nevertheless, the commission has in the past considered and on occasion implemented changes to ECR to deal with the specific circumstances presented to it.

[3] In this case, the commission must address which ratemaking treatment it should provide to the identified fuel and purchased power costs that remain unpaid due to the PSNH bankruptcy filing. Clearly, the customers have paid the revenues related to these costs and have received the power related to these costs. It is reasonable to assume that but for the PSNH financial and legal situation (i.e., the PSNH financial difficulties and its bankruptcy filing), PSNH would have paid these costs.

The commission finds that no change to the accrual accounting based mechanism is necessary to set a just and reasonable ECRM rate under the unique circumstances in this case. The accrual accounting costs provide an appropriate data base to develop a rate related to the cost of fuel and purchased power — despite the uncertainty regarding payment for part of those costs. The commission finds that to credit customers at this point with the fuel and purchased power costs that are currently unpaid would, in essence, make current customers better off than they would have been minus PSNH's difficulties. Thus, for purposes of current rates, we find it appropriate to leave the customers in the same position they would have been in without PSNH's problems.

[4] In order to maintain all ratemaking options for future treatment of the unpaid fuel and purchased power costs, the commission hereby requires PSNH to maintain customer records on usage and addresses (including future addresses) for customers who received any bills based upon the ECRM rates in effect from January 1 — June 30, 1988. PSNH shall maintain these records in a manner such that should the commission order PSNH to provide refunds related to such bills, PSNH could, with the least possible cost, delay and disruption, provide such a refund. The commission imposes this requirement so that refunds specific to particular customers

and their usage, like the refunds required in docket no. DR 86-122, could be implemented if needed. The commission is requiring the maintenance of this information at this time so that should such refunds be required, they would hopefully occur without the delay associated with the refund in docket DR 86-122.

The consumer advocate seems to argue that a customer's federal and state constitutional property rights require us to adjust the ECRM rate to credit customers with the unpaid fuel and purchased power costs at this time. We do not agree. ECRM is a ratemaking mechanism that uses data on revenues and on costs of fuel and purchased power to set a rate. Our discussion above contains our findings on appropriate ratemaking treatment for this particular ECRM rate.

The consumer advocate has not provided any analytical framework or legal support related to property rights to show that our ratemaking result violates anyone's property rights or does not constitute a just and reasonable rate.[3](24)

Thus, for purposes of setting the ECRM rate at this time, the commission shall not credit the current ECRM with the identified unpaid fuel and purchased power costs. If at some time in the future PSNH is relieved of part or all of its obligations to pay those costs, the commission shall provide for the appropriate ratemaking treatment of those facts at that time. The commission finds this treatment for the current ECRM rate to be just and reasonable.

II. *Qualified Facility Costs Recovered in ECRM*

In Report and Order No. 18,950 (72 NH PUC 585) the commission gave notice that we would review the issue of long term QF rates included in ECRM during the instant proceedings. Accordingly, PSNH pre-filed direct testimony by two witnesses on the subject During the hearing the commission ruled that the matter was best decided through a separate forum where the true effect of this issue can be reviewed. Therefore, the issue will be deferred until a later date where it can be focused on and is not part of an expeditious proceeding such as an ECRM docket.

III. *Interest on the Over/Under Collection of ECRM*

PSNH submitted a settlement agreement under which PSNH would calculate the interest on over/under collection of the ECRM revenue utilizing an interest rate corresponding to the rate approved by the commission for customer deposits.[4](25) The actual interest will be calculated quarterly and the estimated interest rate for the current period will be based on the "prime rate" the date of the filing or within two business days prior to the filing and be used for the entire six month projected period. Staff agreed to this proposal. No other party took a position on it.

We will approve this settlement as filed with the understanding that if the prime rate changes between the filing date and the date of the final order approving ECRM, the interest rate will be subject to change.

IV. *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.

Our Order will issue accordingly.

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ORDER

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

ORDERED, that PSNH shall filed revised tariff pages setting an ECRM rate of $3.249/100 KWH for July through December 1988; and it is

FURTHER ORDERED, that the Small Power Producer rates for the hourly period categories of: "On-peak" at $0.394/KWH; "Off-Peak" at $0.0276/KWH; and "all" at $0.0327 KWH for July through December 1988, be, and hereby are, approved; and it is

FURTHER ORDERED, that PSNH shall maintain customer address and usage records as directed in the foregoing Report until: 1) the uncertainty regarding the unpaid purchased power and fuel expense is resolved and 2) ratemaking treatment for those expenses is addressed by the commission in an appropriate order.

By order of the Public Utilities Commission of New Hampshire this eighth day of July, 1988.

FOOTNOTES

[1]PSNH's Memorandum on Treatment of Unpaid ECRM expenses filed on June 24, 1988 indicates that PSNH relies upon § 525(a) of the U.S. Bankruptcy Code for this argument, 11 U.S.C. § 525(a).

[2]N.H. Admin. Rules Puc 307.04 provides that: "All accounting records required by said commission shall follow the uniform classification of accounts of the Federal Energy Regulatory Commission." The FERC rules generally require accrual accounting. 18 CFR Part 101 (General Instructions, Number 11) (1987); I FERC Statutes and Regulations ¶ 15,022.

[3]The consumer advocate provided two attachments to its briefs of correspondence that it presumably desires the commission to rely upon. The commission believes it is appropriate to expect such material to be presented at the hearing, not as an attachment to a brief. Thus, the commission shall disregard this material.

[4]N.H. Admin. Rules Puc 303.04(b)(2), 403.04(b)(2), 503.02(b)(2) and 603.04(b)(2). These rules governing interest on commission deposits were amended to their current form in commission order no. 18,887 (October 28, 1987) (72 NH PUC 516).

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NH.PUC*07/15/88*[52021]*73 NH PUC 274*Bretton Woods Telephone Company

[Go to End of 52021]

73 NH PUC 274

Re Bretton Woods Telephone Company

DF 88-87
Order No. 19,127

New Hampshire Public Utilities Commission

July 15, 1988

ORDER authorizing an independent telephone company to issue securities in order to borrow from the Rural Telephone Bank for the purpose of financing improvements to its facilities.

SECURITY ISSUES, § 44 — Factors affecting authorization — Loan from Rural Telephone

Bank — Improvements and construction of new facilities — Independent telephone company.

[N.H.] An independent telephone company was authorized to issue securities in order to borrow from the Rural Telephone Bank where the proceeds of the loan would be used to finance improvements to its existing facilities and to construct additional telephone facilities to serve new subscribers.

By the COMMISSION:

ORDER

WHEREAS, Bretton Woods Telephone Company, a New Hampshire Corporation having its principal place of business at Route 302, Bretton Woods, New Hampshire, filed a petition on June 10, 1988 for authority for a Rural Electrification Administration Bank Loan in the amount of $456,750; and

WHEREAS, Bretton Woods Telephone Company alleges in its petition that it presently has no outstanding long-term debt or short-term notes; and

WHEREAS, Bretton Woods Acquisition Company, a Georgia limited partnership authorized to conduct business in New Hampshire, is the sole stockholder of Bretton Woods Telephone Company, Inc., holding 200 no par value shares of capital stock; and

WHEREAS, Bretton Woods Telephone Company seeks approval to issue securities, as defined by RSA 369:1 and 2 in order to borrow $456,750 from the Rural Telephone Bank; and

WHEREAS, Bretton Woods Telephone Company proposes to enter into a Telephone Loan Contract with Rural Telephone Bank evidenced by a note in the amount of $456,750 and payable over a thirty-five (35) year period, with interest at 7.% per annum; and

WHEREAS, Bretton Woods Telephone Company proposes to enter a Mortgage and Security Agreement with The Rural Telephone Bank and mortgage all its present and future property, tangible and intangible, including franchises; and

WHEREAS, Bretton Woods Telephone Company proposes to use the proceeds of this loan to finance the improvement and operation of existing Bretton Woods' facilities and for the construction and operation of additional telephone facilities in their exchange to serve approximately 310 net subscribers; and

WHEREAS, Bretton Woods Telephone Company filed the requisite minutes of a special meeting of the stockholders authorizing the proposed financing, and also filed, among other items a Balance Sheet proformed to reflect the effect of the financing; a Statement of Income proformed as of December 31, 1987; Rate Base and Capitalization Ratios; and representative copies of Telephone Loan contract, Mortgage Note, Mortgage and Security Agreement; 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 Bretton Woods Telephone Company be, and hereby is, authorized to issue and sell its secured promissory note in the aggregate principal amount of four hundred fifty-six thousand and seven hundred and fifty dollars ($456,750) said note to bear interest at the rate of seven percent (7%) per annum, payable over a period of thirty-five (35) years, and to be secured by a mortgage and security agreement applicable to all the petitioner's property, presently owned or after acquired, including its franchises and said borrowing to be subject to the

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provisions of the proposed telephone loan contract, the provisions of which proposed telephone loan contract, proposed secured promissory note and proposed mortgage and security agreement are as set forth in the exhibits attached to the petition and on file with the Commission; and it is

FURTHER ORDERED, that the said secured promissory note will be issued for the improvement and operation of existing Bretton Woods' facilities and for the construction and operation of additional telephone facilities in their exchange area, and Bretton Woods will also use $21,750 of the Loan proceeds to purchase class B stock of the Rural Telephone Bank; and it is

FURTHER ORDERED, that on January first and July first of each year Bretton Woods Telephone Company shall file with this Commission a detailed statement sworn 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.

By Order of the Public Utilities Commission of New Hampshire this fifteenth day of July, 1988.

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NH.PUC*07/18/88*[52022]*73 NH PUC 276*Lakeland Management Company, Inc. (Water Utility Division)

[Go to End of 52022]

73 NH PUC 276

Re Lakeland Management Company, Inc. (Water Utility Division)

DE 87-111
Order No. 19,128

Re Lakeland Management Company Inc.
(Sewage Disposal Division)

DE 87-112
Order No. 19,128

New Hampshire Public Utilities Commission

July 18, 1988

ORDER rescinding a report and order on a prehearing conference. For rescinded order see 72 NH PUC 465.

ORDERS, § 9 — Recision — Administrative error.

[N.H.] Where the commission had issued a report and order on the prehearing conference on a petition to establish utilities and had subsequently issued, as a result of an administrative error, a second report and order on the same petition, the latter report and order was rescinded.

By the COMMISSION:

ORDER

WHEREAS, on September 18, 1987, the commission issued a Report on the Prehearing Conference on the Petition to Establish Utilities and Order No. 18,839 (72 NH PUC 434), and on September 28, 1987, through an administrative error the commission issued Report and Order No. 18,856 (72 NH PUC 465) (also a report and order on the prehearing conference); it

is hereby

ORDERED, that Report and Order No. 18,856 is rescinded.

By order of the Public Utilities Commission of New Hampshire this eighteenth day of July, 1988.

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NH.PUC*07/19/88*[52023]*73 NH PUC 277*Connecticut Valley Electric Company, Inc.

[Go to End of 52023]

73 NH PUC 277

Re Connecticut Valley Electric Company, Inc.

DR 88-069
Order No. 19,130

New Hampshire Public Utilities Commission

July 19, 1988

ORDER approving reduced off-peak demand rate for electric utility industrial customer.

RATES, § 327 — Electric rate design — Demand and load — Off-peak use — Industrial customer.

[N.H.] A contract was approved for the sale of electricity to an industrial customer that was designed to provide greater production flexibility by providing up to 100 hours per month of prescheduled service during peak periods without any specific demand billing; the electric utility was ordered to file an annual report regarding the effectiveness of the contract to achieve its stated objective of shifting load from peak to off-peak periods.

By the COMMISSION:

ORDER

WHEREAS, on August 19, 1987 the Connecticut Valley Electric Company (Company) submitted Special Contract NHPUC No. 6 (DR 87-55) with Joy Technologies, Inc. (Joy) which provided for a reduced off-peak demand rate for Joy; and

WHEREAS, on August 25, 1987, the Company in DR 87-149 proposed a reduction in its Purchased Power Cost Adjustment contingent upon commission approval of the Special Contract with Joy; and

WHEREAS, upon investigation and consideration the commission found by Order No. 18,811 (72 NH PUC 385) that said contract was just and consistent with the public interest and ordered that it be made effective as of September 2, 1987; and

WHEREAS, on May 11, 1988 the Company submitted Special Contract NHPUC No. 7 with Joy to be used in conjunction with Special Contract NHPUC No. 6; and

WHEREAS, Special Contract NHPUC No. 7 is designed to provide Joy with greater production flexibility by providing up to 100 hours per month of pre-scheduled service during peak periods without any specific demand billing; and

WHEREAS, the Company contends that such service can be provided at no additional cost to other customers when it or its primary supplier, Central Vermont Public Service Corporation, forecasts that the system will not experience peak load conditions; and

WHEREAS, upon investigation and consideration, this commission believes that the proposed additions to Special Contract No. 6 (incorporated in Special Contract No. 7) do not change unduly the original agreement and therefore do not disturb our initial findings; it is therefore

ORDERED, that Special Contract No. 7 be, and hereby is, approved for effect on the date of this order; and it is

FURTHER ORDERED, that the Company file annually with this commission a status report on the effectiveness of these agreements to achieve their stated

objective, namely, to shift load from peak to off-peak periods.

By order of the Public Utilities Commission of New Hampshire this nineteenth day of July, 1988.

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NH.PUC*07/21/88*[52024]*73 NH PUC 278*Jimmie D. McLaughlin et al.

[Go to End of 52024]

73 NH PUC 278

Re Jimmie D. McLaughlin et al.

DE 88-091
Order No. 19,133

New Hampshire Public Utilities Commission

July 21, 1988

ORDER granting license to construct water, sewer and electrical plant beneath and across state-owned railroad property.

CERTIFICATES, § 76 — Grant or refusal — Utility facilities — Across public railroad facilities.

[N.H.] A license was granted for the construction, operation, maintenance, repair and reconstruction of water, sewer and electrical facilities beneath and across public railroad property, because the crossing fulfilled the health and safety needs of the petitioners without substantially affecting public rights in that land.

By the COMMISSION:

ORDER

WHEREAS, on June 22, 1988, Jimmie D. and Jeanie R. McLaughlin filed with this Commission their petition seeking license under RSA 371:17 to construct water, sewer and electrical plant beneath State-owned railroad property in Lincoln, New Hampshire; and

WHEREAS, said facilities are proposed to serve the Linwood Shopping Center, Main Street, Lincoln, New Hampshire; and

WHEREAS, the Commission finds this crossing fulfills the health and safety needs of the petitioners without affecting substantially the public rights in said land; and

WHEREAS, taking administrative notice of its Docket DE 87-152, the Commission notes that response (or lack thereof) to public notice of its Order No. 18,860 (72 NH PUC 475) issued in said docket has proven that all parties were in agreement according to RSA 371:22; and

WHEREAS, the crossing of state-owned railroad property in DE 87-152 is essentially in the same area of the instant docket, both being identified by drawing No. 87-69 on file with this Commission and further identified on Railroad Map V30/22; and

WHEREAS, the Commission finds such evidence justifies waiver of public hearing according to RSA 371:22; it is

ORDERED, that license is granted under RSA 371:17 et seq to Jimmie D. and Jeanie R. McLaughlin, P. O. Box 456, Lincoln NH 03521 for the construction, operation, maintenance, repair and reconstruction of water, sewer and electrical facilities beneath and across public railroad property in Lincoln NH identified as between approximate Valuation Stations 1112 + 50 and 1115 + 50, Map V30/22; and it is

FURTHER ORDERED, that all construction conform to requirements of the Bureau of Railroads (DOT), Water Supply and Pollution Control Division (DES), the National Electrical Safety Code and others as mandated by the Town of Lincoln; and it is

FURTHER ORDERED, that public notice of this order is waived and this

license is effective on June 15, 1988; and it is

FURTHER ORDERED, that this order does not exempt the petitioners from present or future rules issued for water, sewer and electric utilities.

By order of the Public Utilities Commission of New Hampshire this twenty-first day of July 1988.

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NH.PUC*07/25/88*[52025]*73 NH PUC 279*Pennichuck Water Works, Inc.

[Go to End of 52025]

73 NH PUC 279

Re Pennichuck Water Works, Inc.

DE 87-132
Order No. 19,135

New Hampshire Public Utilities Commission

July 25, 1988

ORDER granting franchise for service expansion to water utility.

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1. CERTIFICATES, § 72 — Grant or refusal — Public good — Standard of fitness.

[N.H.] A petition to provide new utility service will be granted only if it would be for the public good, which is determined by examining the need for service and the ability of the applicant to provide 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 the applicant. p. 281.

2. SERVICE, § 210 — Extensions — Water utility.

[N.H.] A water utility was granted authority to extend service to a limited area within a municipality and to certain developments where a need for the service existed and the utility had demonstrated that it was financially, managerially, technically, and generally able to provide service. p. 281.

APPEARANCES: Mary Ellen Kiley, Esq. and John Pendleton, Esq. of Gallagher, Callahan, and Gartrell, P.A. on behalf of Pennichuck Water Works Inc.; Michael Love, Esq. on behalf of Southern New Hampshire Water Company; Marc A. Pinard, Esq. of Hinkley and Hahn on behalf of the Town of Derry; and Mary C.M. Hain, Esq. on behalf of the Staff of the New Hampshire Public Utilities Commission.

By the COMMISSION:

REPORT

I. *Procedural History*

On June 16, 1987, Pennichuck Water Works, Inc. (Pennichuck) filed a petition, pursuant to RSA 374:22, to provide water service to a limited area in the Town of Derry, New Hampshire at developments known as Hubbard Hill and Bellebrook Estates and implicitly to establish rates pursuant to RSA 378:5. An order of notice was issued on July 16, 1987 scheduling a prehearing conference for August 4, 1987. Pursuant to a request from Pennichuck, this prehearing conference was rescheduled for September 9, 1987.

On July 31, 1987, Southern New Hampshire Water Company (Southern) filed a motion to intervene. On August 9, 1987, Southern filed a corrected page 2 of its motion to intervene.

At the prehearing conference, the commission granted Southern's intervention from the bench and the parties agreed to a procedural schedule. In report and order no. 18,837 (September 16, 1987) the

commission approved this schedule. It scheduled a hearing on January 19, 1988.

On October 2, 1987, Pennichuck filed prefiled testimony of Bonalyn J. Hartley and Stephen J. Densberger in support of the petition. On October 16, 1987, Southern filed a motion to strike the prefiled testimony of Bonalyn J. Hartley and to continue the procedural schedule. On

October 21, 1987, Pennichuck filed an objection to the motion to strike. By report and order no. 18,912 (November 17, 1987) (72 NH PUC 537) the commission denied the motion to strike and granted the motion for continuance.

On February 5, 1988, Pennichuck filed a motion to amend its petition. The motion requested that the commission investigate, as a part of the proceeding, the consolidation of the Hubbard Hill and Bellebrook Estates (Hubbard/Bellebrook) service areas with Pennichuck's existing Drew Woods and Poole Farm (Drew/Poole) franchise area. It also requested that the commission consider setting rates for the Hubbard Hill and Bellebrook Estate areas at the same level as the interim rates approved by the commission for Poole Farm and Drew Woods.

On February 17, 1988, the commission issued an order of notice setting a prehearing conference for March 23, 1988. On February 19, 1988, Southern filed an objection to Pennichuck's motion to amend.

At the prehearing conference the commission ruled from the bench that this docket would include an investigation of whether the service territories should be consolidated and whether the rates fixed for Hubbard Hill and Bellebrook Estate should be the same as the interim rates set in DE 87-27 for Drew Woods and Poole Farm. By the Report on Prehearing Conference and Order no. 19,049 (April 4, 1988), the commission approved a procedural schedule to govern the duration of the proceeding. The schedule set June 22-23, 1988 for the hearing on the merits.

On May 20, 1988 Southern filed a motion to compel responses to Southern's data requests set #2, requests #4 and #5. On May 27, 1988, Pennichuck filed responses to Southern's data requests set #2, requests #4 and #5. On June 17, 1988, the Town of Derry filed a motion to intervene.

At the hearing, the Town withdrew its intervention but stated for the record that it intends to control all new water systems as they develop. Its withdrawal was based upon a decision not to go forward with its plans to immediately acquire the water system serving Hubbard/Bellbrook. The commission requested that the Town memorialize this position and send it to the commission. This position was filed on July 8, 1988.

Pennichuck agreed to calculate and file with the commission an analysis of whether its estimate of the cost per well is accurate. This calculation was filed on July 14, 1988.

Pennichuck presented testimony in support of its petition. The staff raised several minor issues through cross examination.

II. *Findings of Fact*

We will take notice of our past decisions indicating petitioner's legal, technical, financial, and business ability to provide service as a water utility (e.g. dockets DE 87-27, DE 87-22 and DE 87-26). Customers in Hubbard Hill are already being served. Customers in Bellebrook will be ready for service in September. It is estimated that the two developments will house 154 customers. Pennichuck has made adequate investments in wells,

pumps, structures, and tanks to provide the proposed service.

The physical interconnection of the Hubbard/Bellebrook and Drew/Poole systems will

provide for a back-up source of water, and it will facilitate short-term and long-term planning. The Water Supply and Pollution Control Division of the Department of Environmental Services approved the interconnection by a letter dated March 3, 1988.

Pennichuck calculated its revenue requirement based on the following estimated expenses: operation and maintenance expenses of $11,259, depreciation expense of $3,260, taxes of $4,653 and a rate of return of $11,378 based on a cost of capital of 11.44%. The expenses were calculated using the same methodologies approved by the commission in the Drew/Poole rate case (DE 87-27, order no. 18,955 [72 NH PUC 589]).

The rate base for the Hubbard/Bellebrook system is $99,457. The rate base for the Drew/Poole system is $106,162.

Pennichuck divided the revenue requirement by the number of customers in the two service areas. This calculation produced the following rates: for the Hubbard/Bellebrook system $198 per customer per year, for the Drew/Poole system $192 per customer per year, for a consolidated system rate of $195 per customer per year. Pennichuck has requested a consolidated system rate of $192 per customer per year primarily for accounting and administrative ease. It agreed to file new tariff pages which name all of the developments served in the service area. Pennichuck calculated the consumption level using the same amount used in DE 87-27 (8,000 cubic feet per customer).

In determining the purchase price that Pennichuck would pay the system developer for the Hubbard/Bellebrook supply and distribution equipment and easements, Pennichuck decided to offer an amount that would produce rates similar to the Drew/Poole system rates since it has been provided no information from the developer about the actual cost of the system.

III. *Commission Analysis*

[1] 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 at 5, 70 NH PUC 563, 566 (June 27, 1985), we stated our criteria for determining the public good as: 1) the need for service, and 2) the ability of the applicant to provide 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 the applicant.

Re International Generation & Transmission Co., DSF 82-30, Order No. 15,755 at —, 67 NH PUC 478, 484 (July 9, 1982).

[2] The facts show a need for the service because water service is currently being provided in the service area. The facts demonstrate that Pennichuck is financially, managerially, technically, and generally able to provide service.

The rates for utility service must be just and reasonable. RSA 378:28. We conditionally find

that the proposed revenue

requirement and resulting rates are just and reasonable. However, we will require Pennichuck to file the actual cost of the system. If the purchase price reflects the actual cost of the system, we will allow the rates to go into effect.

Under RSA 378:28, permanent rates should be sufficient to yield a reasonable return on the cost of the property less accrued depreciation. The company has calculated to our satisfaction its expenses, an appropriate rate of return, and then allocated these costs among its customers. Conditioned on the filing of the actual cost of the system, the information provided is adequate to make this determination in light of the facts that 1) no historic costs are available, and 2) the commission will be reviewing these rates in one year.

We find it appropriate for Pennichuck to consolidate the service territories in light of the system planning benefits to be derived.

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. shall be granted a franchise to provide water service to Hubbard Hill and Bellebrook Estates in the Town of Derry; and it is

FURTHER ORDERED, that Pennichuck shall consolidate this service area with its Drew Woods and Poole Farm service area; and it is

FURTHER ORDERED, that Pennichuck shall charge the rates currently charged for the Drew Woods and Poole Farm service territories on an interim basis for a period of twelve months; and it is

FURTHER ORDERED, that Pennichuck will file with the Commission to the best of its ability the actual original costs of the system and the Commission shall determine from the material filed whether the interim rates at the end of the twelve-month period shall become permanent. The interim rates during the twelve-month period shall be subject to refund.

By order of the Public Utilities Commission of New Hampshire this twenty-fifth day of July, 1988.

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NH.PUC*07/25/88*[52026]*73 NH PUC 282*Rosebrook Water Company

[Go to End of 52026]

73 NH PUC 282

Re Rosebrook Water Company

DE 88-101

Order No. 19,137

New Hampshire Public Utilities Commission

July 25, 1988

ORDER approving the acquisition of a water utility.

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1. CONSOLIDATION, MERGER, AND SALE, § 6 — Powers of state commission — Statutory requirements.

[N.H.] State statute RSA 374:30 allows a public utility to transfer or lease its franchise, works or system only when the commission shall find it will be for the public good and shall make an order assenting thereto. p. 283.

2. CONSOLIDATION, MERGER, AND SALE, § 18 — Grounds for approval — Acquisition of water utility.

[N.H.] A corporation's acquisition of a water utility was approved where (1) the commission had satisfied itself that the parent company of the acquiring company was capable of

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operating in accordance with the rules and regulations of the commission, (2) no changes in the operation of the water utility were contemplated, and (3) the acquisition was found to be in the public good. p. 283.

By the COMMISSION:

ORDER

[1, 2] WHEREAS, by letter dated June 30, 1988, The Satter Company of Bretton Woods (company) has informed the commission of their acquisition of all outstanding capital stock of the Rosebrook Water Company; and

WHEREAS, RSA 374:30 allows public utility to transfer or lease its franchise, works or system only when the commission shall find it will be for the public good and shall make an order assenting thereto; and

WHEREAS, the commission satisfied itself in Docket DS 87-218 that the parent company of the acquiring company is capable of operating in accordance with the rules and regulations of the commission; and

WHEREAS, the parent company has stated that no changes in operation of Rosebrook Water Company are contemplated; and

WHEREAS, the commission finds the acquisition to be for the public good; it is herein

ORDERED, that the Satter Company of Bretton Woods' acquisition of all outstanding capital stock of Rosebrook Water Company is approved; and it is

FURTHER ORDERED, that within thirty days hereof, the company provide this commission with an updated organizational structure which identifies the relationship of the various corporations and the specific individuals having responsibility for each.

By order of the Public Utilities Commission of New Hampshire this twenty-fifth day of July, 1988.

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NH.PUC*07/25/88*[52027]*73 NH PUC 283*Resort Waste Services, Inc.

[Go to End of 52027]

73 NH PUC 283

Re Resort Waste Services, Inc.

DS 88-102
Order No. 19,138

New Hampshire Public Utilities Commission

July 25, 1988

ORDER authorizing transfer of all rights and responsibilities of waste service company.

CONSOLIDATION, MERGER, AND SALE, § 6 — Jurisdiction powers, and duties of commissions — Waste service company — Transfer.

[N.H.] Permission was granted for the transfer of all rights and responsibilities of a waste service company, pursuant to statute allowing a public utility to transfer or lease its franchise, works or system or any part of such franchise, works, or system when the commission finds it will be for the public good.

By the COMMISSION:

ORDER

WHEREAS, by letter dated June 30, 1988 The Satter Company of Bretton Woods (company) has informed the commission that they have succeeded to all rights and responsibilities of Bretton Woods Acquisition Company as a “capacity control member” of Resort Waste

Services, Inc.; and

WHEREAS, RSA 374:30 allows a public utility to transfer or lease its franchise, works or system or any part of such franchise, works, or system only when the commission shall find it

will be for the public good and shall make an order assenting thereto; and

WHEREAS, the commission has satisfied itself in Docket DS 87-218 that the parent company of the acquiring company, Satter Companies of New England, is capable of operating in accordance with the rules and regulations of the commission; and

WHEREAS, the parent company has stated their commitment that all of the responsibilities of capacity control members be fulfilled; and

WHEREAS, the commission finds the succession of rights and responsibilities to be for the public good; it is herein

ORDERED, that the succession of The Satter Company of Bretton Woods to the rights and responsibilities of Bretton Woods Acquisition Company is approved; and it is

FURTHER ORDERED, that within thirty days hereof, the company provide this commission an updated organizational structure which identifies the relationship of the various corporations and the specific individuals having responsibility for each.

By order of the Public Utilities Commission of New Hampshire this twenty-fifth day of July, 1988.

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NH.PUC*07/26/88*[52028]*73 NH PUC 284*New England Telephone and Telegraph Company

[Go to End of 52028]

73 NH PUC 284

Re New England Telephone and Telegraph Company

DE 88-100
Order No. 19,139

New Hampshire Public Utilities Commission

July 26, 1988

ORDER nisi granting license to place and maintain aerial telephone plant.

CERTIFICATES, § 123 — Grant or refusal — Aerial telephone cable.

[N.H.] A telephone utility was granted a license to place and maintain aerial telephone plant across a river in order to expand its service facilities, provided that no hearing requests on the matter were received.

By the COMMISSION:

ORDER

WHEREAS, on July 12, 1988, the New England Telephone & Telegraph Company (NET) filed with this Commission a petition seeking license under RSA 371:17 to place and maintain aerial telephone plant across the Saco River in Hart's Location, New Hampshire; and

WHEREAS, such crossing is necessary to expand the NET facilities to serve its Bartlett Exchange franchise area; and

WHEREAS, NET assures the Commission that the crossing will be constructed and maintained according to accepted safety standards and will not adversely affect the public rights in said waters; and

WHEREAS, such crossing is determined to be in the public good, yet the Commission feels that public must be

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given the opportunity to respond in favor of or in opposition thereto; it is

ORDERED, that all persons desiring to respond to this NET 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 August 9, 1988; and it is

FURTHER ORDERED, that such notice be given via one time publication of this order in a newspaper having broad circulation in the affected area, such publication to be no later than August 2, 1988 and documented by affidavit to be made on a copy of said notice to be filed with this Commission; and it is

FURTHER ORDERED *NISI*, that NET be, and hereby is granted license under RSA 371:17 et seq to construct and maintain an aerial telephone crossing over the Saco River, said crossing originating at Pole Tel 5/66 on State Highway 302 proceeding across said river approximately 308 feet to Pole Tel 5/66-1 situated on the private property of David Waible in the municipality of Harts Location as depicted on Drawing No 17-2 and maps 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 this license shall become effective 20 days after the date of this order, unless a hearing is requested or the Commission otherwise directs prior to that date.

By order of the Public Utilities Commission of New Hampshire this twenty-sixth day of July, 1988.

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73 NH PUC 285

Re Public Service Company of New Hampshire

DR 86-41
Order No. 19,141

Re Unitil Service Company

DR 86-69
Order No. 19,141

Re New Hampshire Electric Cooperative, Inc.

DR 86-70
Order No. 19,141

Re Granite State Electric Company

DR 86-71
Order No. 19,141

Re Connecticut Valley Electric Company

DR 86-72
Order No. 19,141

New Hampshire Public Utilities Commission

August 10, 1988

ORDER establishing timetables for updating long-term and short-term avoided cost estimates and for filing an integrated least-cost resource plan.

COGENERATION, § 30 — Rates — Avoided cost — Methods of computation — Cost estimates and projections — Filing requirements.

[N.H.] Consistent with commission policy on purchase power arrangements between the state's electric utilities and qualifying small power producers and cogenerators, each utility is required to file reports and analysis of an integrated least-cost resource plan by April 15th, biennially in even numbered years; the following timetables for compliance were established: (1) updated long-term avoided cost projection estimates must be filed on or before October 1, 1988; (2) an integrated least-cost resource plan must be filed on or before April 30, 1989; and (3) short-term avoided cost calculations must be filed as of the utility's winter

1988-89 fuel adjustment clause purchase power adjustment or energy cost recovery mechanism proceeding.

By the COMMISSION:

REPORT

I. INTRODUCTION

On April 7, 1988 this commission issued report and order no. 19,052 (order 19,052) in Phase III of the above referenced dockets that, *inter alia,* provided the commission's policy with regard to purchase power arrangements between the state's electric utilities and qualifying small power producers and cogenerators. Consistent with this policy each utility is required to file with the commission reports and analysis (including updated avoided costs estimates) of an integrated least cost resource plan by April 15th, biennially in even numbered years. However, for the year 1988 we waived the requirement that the plan be filed by April 15, 1988 and rather directed the commission staff (staff) to schedule a workshop for the purpose of establishing reasonable timetables for compliance.

Pursuant to our directive, staff scheduled and held a workshop at the commission's offices on Thursday, April 21, 1988. Following the workshop, staff informed us that the parties agreed that each utility would file a compliance report with this commission relating to the requirements of order no. 19,052 (73 NH PUC 117). Further, to ensure completeness and consistency among utility's compliance reports, the parties also agreed that staff would make a formal data request for the compliance report and the information to be included therein. Upon meeting with staff we approved of this procedure and instructed staff to proceed accordingly.

By letter dated April 28, 1988 filed in this docket, staff made said formal data request for a compliance report and specified that each utility address the following five areas:

1. A reasonable timetable for:

   a) updating the long term avoided cost estimates,
   and
   b) compliance with the remaining filing requirements of the biennial integrated least cost resource plan.

2. The reports and analysis currently utilized by the utility for strategic planning.

3. Summary information relating to the current status of all QFs under contract to sell its electrical output to the utility.

4. The current procedures utilized by the utility to secure QF capacity both on a long term and short term basis.

5. The utility's action plan to comply with the commission's requirements regarding avoided cost rate calculations and offering.

The utilities duly filed separate compliance reports addressing the above referenced requests.

II. COMMISSION ANALYSIS

Our purpose in the instant order is to establish reasonable timetables for each utility's

compliance with order 19,052. In particular, we will establish filing dates for:

1) updating long term avoided cost projections

2) compliance with the remaining filing requirements of the integrated least cost resource plan, and

3) compliance with any requirements regarding short term avoided cost rate calculations.

In reaching our decision herein we have relied a great deal on the compliance reports filed by the utilities.

1. *Updating Long-term Avoided Cost Projections*

We will require that each utility file updated long-term avoided cost estimates on or before October 1, 1988. As provided for in order 19,052 the methodology for forecasting long-term avoided cost should be consistent with the methodology adopted in Phase I of this proceeding. Moreover, the calculation of avoided cost should derive from the respective utility's least cost integrated resource plan. As further discussed below, for the purpose of this initial long-term avoided cost update we will not require each utility to be in full compliance with the remaining requirements of the integrated least cost plan. Furthermore, we do not intend to implement the hearing and review process and the corresponding avoided cost pricing procedures contemplated in order 19,052 until a full compliance filing is made. Therefore, the October 1, 1988 long-term avoided cost update will act as a bridge for moving towards full compliance and implementation of order 19,052 by providing current avoided cost information needed by QFs to compete effectively with the utilities other resource options. To this end, we also require the utilities to provide along with the avoided cost update, a description detailing the procedures being utilized for securing purchase power arrangements with QFs and the extent to which the avoided cost projections play a role in this procedure. The commission retains absolutely the prerogative to call for formal hearings on the avoided cost update upon its own motion or upon the motion of another party if it believes such a hearing is required.

2. *Compliance with the Remaining Requirements of the Integrated Least Cost Resource Plan*

We will require that each utility file an integrated least cost resource plan, in full compliance with order 19,052, on or before April 30, 1989. We have extended this filing date beyond the April 15 date previously required of a biennial filing, partly in response to Granite State's request for modification and extension of the filing date. While we are not extending this date the full length of Granite State's proposal, we do believe that an April 30 filing date will enable all the utilities to utilize the most up-to-date information available on the most recent power year and allow sufficient time for developing its integrated least cost resource plan for filing. Henceforth, we will require the integrated least cost resource plan to be filed on or before April 30 of the appropriate compliance year.

Generally the utilities have expressed a willingness to work with staff to ensure that the integrated least cost resource plan adequately fulfills the compliance requirements of order 19,052. In addition, there appears to be a need to continue to clarify the requirements of order 19,052 as they relate to each individual utility given its specific and sometimes unique

characteristics. Therefore, we have provided a

relatively generous time period for compliance , in part, under the assumption that this time will be used by the utilities to work to prepare interim reports and work with our staff to ensure an appropriate filing in full compliance with order 19,052 on or before April 30, 1989. The utilities have proposed dates for making various interim filings and in some cases for meeting with staff. We find those proposals reasonable. To facilitate this process we will direct our staff to establish informal processes by which to work with each utility. There should be no ambiguity, however, that the responsibility for compliance with order 19,052 rests squarely on each utility's shoulder and not staff's.

3. *Compliance with the Requirements Regarding Short-term Avoided Cost Calculations*

The utilities have proposed to comply with the requirements regarding short term avoided cost calculations as of their winter 1988/89 Fuel Adjustment Clause/Purchase Power Cost Adjustment or Energy Cost Recovery Mechanism proceeding. The commission hereby adopts those proposals.

III. FUTURE COMPLIANCE FILINGS

Future filings made in accordance with this report and order shall receive new and utility specific docket number identification at the time a filing is made. Docket no. DR 86-41, DR 86-69, DR 86 70, DR 86-71 and DR 86-72 will be officially closed.

Our order will issue accordingly.

ORDER

Upon consideration of the foregoing report on the establishment of timetables for updating long term and short term avoided cost estimates and the filing of an integrated least cost resource plan, which is made a part hereof, it is hereby

ORDERED, that the above referenced utilities file updated long term avoided cost estimates on or before October 1, 1988; and it is

FURTHER ORDERED, that those utilities file an integrated least cost resource plan, on or before April 30, 1989; and it is

FURTHER ORDERED, that the utilities comply with the requirements regarding short term avoided cost calculations as of its winter 1988/89 Fuel Adjustment Clause/Purchase Power Cost Adjustment or Energy Cost Recovery Mechanism proceeding.

By order of the Public Utilities Commission of New Hampshire this tenth day of August, 1988.

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NH.PUC*08/12/88*[52030]*73 NH PUC 288*Contributions in Aid of Construction

[Go to End of 52030]

73 NH PUC 288

Re Contributions in Aid of Construction

Movant: Public Service Company of New Hampshire

DF 87-113
Order No. 19,142

New Hampshire Public Utilities Commission

August 12, 1988

ORDER denying motion for rehearing of prior order concerning appropriate methods for recovering tax costs associated contributions in aid of construction. For prior order see 73 NH PUC 137.

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1. VALUATION, § 250 — Contributions in aid of construction — Recovery of tax liability.

[N.H.] In denying a motion by an electric utility for rehearing of an order establishing procedures for the recovery of increased tax costs associated with contributions in aid of construction (which were made subject to federal income tax liability by the Tax Reform Act of 1986), the commission rejected the contention that the order failed to provide any method permitting current recovery of the increased tax costs; the commission found that the contention that current recovery of the increased tax costs was not provided for was based on the erroneous assumption that the utility had been allowed rates which recover only the amount of tax costs that had been found in its last rate case; moreover, the commission found that inasmuch as the utility's rate base had decreased since its last rate case, the rate of return being earned was in excess of the cost of capital found in that case, and deferred taxes had grown substantially, it would be inappropriate to adjust rates for increased taxes associated with CIAC without consideration of all other items included in the cost of service. p. 290.

2. VALUATION, § 250 — Contributions in aid of construction — Recovery of tax liability — Rate base adjustments.

[N.H.] In denying a motion by an electric utility for rehearing of an order establishing procedures for the recovery of increased tax costs associated with contributions in aid of construction (which were made subject to federal income tax liability by the Tax Reform Act of 1986), the commission reiterated its prior finding that because the amounts of future CIAC are speculative, including future deferred taxes associated with CIAC in rate base would violate the rate-making policy against including future projected rate base adjustments in rates. p. 290.

3. VALUATION, § 250 — Contributions in aid of construction — Income tax liability — Interconnection fees paid by small power producers.

[N.H.] In denying a motion by an electric utility for rehearing of an order establishing

procedures for the recovery of increased tax costs associated with contributions in aid of construction (which were made subject to federal income tax liability by the Tax Reform Act of 1986), the commission rejected the assertion that the utility should be allowed to collect taxes associated with CIAC received in the form of interconnection fees paid by small power producers; the commission found that Internal Revenue Service Advance Notice 87-72 supported the view that payments made by small power producers to the utility were not taxable. p. 291.

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i. VALUATION, § 250 — Contributions in aid of construction — Income tax liability — Payments which benefit public as a whole.

[N.H.] Statement, by commission in denying a motion by an electric utility for rehearing of an order establishing procedures for the recovery of increased tax costs associated with contributions in aid of construction (which were made subject to federal income tax liability by the Tax Reform Act of 1986), that it is clear from Internal Revenue Service Advance Notice 87-72 that it is not the intent of the IRS to tax CIAC associated with highway relocations or other projects that benefit the public as a whole. p. 291.

By the COMMISSION:

REPORT REGARDING MOTION TO REHEAR REPORT AND ORDER NO. 19,055

On April 29, 1988 Public Service Company of New Hampshire (PSNH) moved that the commission rehear and reconsider its Report and Order No. 19,055 (73 NH PUC 137). On May 9, 1988 Concord Electric Company and Exeter and Hampton Electric Company filed a letter to support

the motion for rehearing filed by PSNH, and to identify specific concerns with the same report and order. Upon consideration of these motions, this report and order reaffirms the findings in the initial Order No. 19,055. This appeal was filed more than twenty days after the decision. Therefore, we are not required to address the issues. Even though the appeal is denied we will address the issues which have been raised.

[1] We will discuss each issue raised by the parties to this appeal. The first issue raised by PSNH is an issue which is presently before the New Hampshire Supreme Court in their appeal of our decision in Docket No. DR 86-122. PSNH contends that the decision fails to provide any method permitting current recovery of increased tax costs associated with Contributions in Aid of Construction (CIAC). The further claim that the only means to adjust rate base is through changes in accumulated deferred taxes and only in a future rate case. Finally, it is alleged that the utility has a new tax liability which cannot be reflected in current rates.

The commission finds that in the case of PSNH there is no basis in fact for their claims. It is erroneous to assume that the Company has been allowed rates which recover only the amounts which were found in the last rate case. The rate base has changed since the test year in DR 86-122. Ratemaking is not a static procedure. The Company has added and retired plant; has

accumulated additional funds in its depreciation reserve; has accumulated additional deferred income taxes; and has added new customers and sales since the last rate case. Therefore, the commission constantly monitors the Company's earnings on a regulated basis. For the twelve months ending December 31, 1987 the rate base has actually decreased since the last rate case and the rate of return being earned is in excess of the cost of capital found in the last rate case. The rate base in DR 86-122 was $619,540,000. The average rate base for 1987 was $615,753,000; including $1,121,478 of deferred taxes on CIAC. The deferred income taxes in DR 86-122 were $46,804,094, which has grown to $76,983,722. Based upon the records on file at the commission, deferred taxes have grown substantially. If the Company's position were adopted, deferred taxes would decrease. On a pro forma basis, due to the fact that accelerated depreciation is used for tax purposes and straight-line depreciation is used for ratemaking purposes, deferred income taxes on test year rate base would have resulted in increased deductions from rate base in the twelve months beyond the test year. It would be inappropriate for the commission to look at deferred charges due to the CIAC and to fail to take into account the offsetting deferred credits. Finally, as we have previously stated, utilities will be allowed to earn a rate of return on any deferred taxes related to CIAC. We will, however, not look at that impact without consideration of all other items included in the cost of service.

The foregoing discussion can be applied to the Company's second issue. PSNH has not been denied recovery. Recovery is taking place at the present time in the current rates which are in effect.

[2] PSNH claims that the CIAC decision misstates the ground for the previous rejection of the pro forma adjustment for the tax impact of the Tax Reform Act of 1986 in DR 86-122. We disagree with the Company. The anti-CWIP statute states that “At no time shall any rates or charges be based on the cost of construction work if said construction work is not completed.” As stated in Order No. 19,055, we

Page 290

would be including costs which have not yet occurred if we were to include future deferred taxes in rate base. We would also be including costs which are not known and measurable. The amounts of future CIAC's are speculative. It is not the ratemaking policy of this commission to include future projected rate base adjustments in rates.

[3] PSNH asserts that the decision incorrectly characterizes fees paid by small power producer's interconnections as non-taxable and it should be allowed to continue to collect the tax associated with CIAC from small power producers. It is claimed that there is no record to support the findings that these contributions are not taxable. Concord and Exeter and Hampton Electric Companies support PSNH's contention. As part of the record in this case, a copy of the Internal Revenue Service Advance Notice 87-82 on public utility taxes was filed by the New Hampshire Department of Transportation. Section VIII of that document reads as follows:

VIII. Transactions not Affected by this Notice

> This notice does not apply to transactions which do not involve CIACs as described under section 118(b) and this notice. Thus, for example, this notice does not apply to “customer connection fees” as defined in section 118 (bX3XA) of the 1954 Code. (Such

connection fees are currently included in gross income by utilities under both the 1986 and 1954 Codes.) Similarly, this notice does not apply to payments made from utilities to their customers. Thus, for example, this notice does not apply to payments made to a public utility in connection with the supply of electricity to such utility by a cogenerating facility under the Public Utilities Regulatory Policy Act of 1978 ("PURPA"), Pub. L. No. 95-617. No inference is intended herein as to the treatment of such transactions.

Under New Hampshire statutes small power producers are utilities (RSA 362:2; 362-A:2). Therefore, payments made to its customers (PSNH, etc.) are not taxable. We do not consider that decision to be speculative. These payments are not taxable to PSNH and are, therefore, not a cost to be collected. There is no tax on these fees. IRS Notice 87-82 addresses the issue of highway relocations as follows:

[i] In contrast, the legislative history to the Act provides that the repeal of section 118(b) of the 1954 Code does not affect transfers of property which are not made in connection with the provision of services, including situations where "it is clearly shown that the benefit of the public as a whole was the primary motivating factor in the transfers." Id.

Based on the foregoing, the Federal income tax treatment of many types of relocation fees has not been affected by section 824 of the Act. If, for example, it can be shown that particular payment received by a utility does not reasonably relate to the provision of services by such utility to or for the benefit of the person making the payment but rather relates to the benefit of the public at large, then the payment is not treated as a CIAC under section 118(b) of the 1986 Code. For example, relocation payments received by a utility under a government program for placing utility lines underground shall not be treated as CIACs where such relocation is undertaken for purposes of community esthetics and public safety and not for the

direct benefit of particular customers of the utility in their capacity as customers. See *Brown Shoe Co. v. Commissioner of Internal Revenue,* 339 U.S. 583, 94 L.Ed. 1081, 70 S.Ct. 820 (1950) (payments made by certain community groups, as an inducement to location or expansion of taxpayer's factory were held to be contributions to taxpayer's capital because the payments were made to benefit the community at large and not for services). Similar principles apply where the utility is being reimbursed for the costs of relocating utility lines to accommodate the construction or expansion of a highway and not for the provision of utility services.

It is clear from the preceding excerpt that it was not the intent of the IRS to tax payments which benefit the public as a whole. In any event, we have found that a utility will be able to include any deferred taxes related to contributions in aid of construction in rate base and earn a return until any tax is recovered through tax depreciation deductions.

Our previous decision holds and the appeal is denied.

Our Order will issue accordingly.

ORDER

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

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

By order of the Public Utilities Commission of New Hampshire this twelfth day of August, 1988.

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NH.PUC*08/15/88*[52031]*73 NH PUC 292*Northeast Hydrodevelopment Corporation — McLane Dam

[Go to End of 52031]

73 NH PUC 292

Re Northeast Hydrodevelopment Corporation — McLane Dam

DR 85-186
Order No. 19,143

New Hampshire Public Utilities Commission

August 15, 1988

ORDER rescinding small power producer's long-term rates.

COGENERATION, § 24 — Long-term rates — Recision — Delays in fulfilling obligations.

[N.H.] The long-term small power producer rates previously granted to a proposed hydroelectric power project dam were rescinded due to the developer's failure to reasonably fulfill obligations under that rate order, including the representation that beginning in a specified year the project's output would be sold to an electric utility and provide reliable service over the life of the obligation; delays caused by the licensing procedures of the Federal Energy Regulatory Commission were not sufficient justification for a waiver of the developer's obligations under the rate order.

APPEARANCES: Normand E. Hebert on behalf of Northeast Hydrodevelopment Corporation; Thomas B. Getz, Esq. on behalf of Public Service Company of New Hampshire; and Mary C.M. Hain, Esq. on behalf of the Staff of the New Hampshire Public Utilities Commission.

By the COMMISSION:

REPORT

The following report analyzes whether the long term small power producer rates previously granted to the proposed

McLane hydro electric power project dam should be rescinded. It sets forth the procedural history, the positions of the parties, our findings of fact, and analysis. The report and order rescind the rate.

I. *Procedural History*

On August 13, 1985 the New Hampshire Public Utilities Commission (commission) approved long term rates for the sale of electricity from Northeast Hydroelectric Corporation's (NHC) proposed McLane hydro electric dam power project to Public Service Company of New Hampshire (PSNH). *Re Northeast Hydrodevelopment Corp.*, docket DR 85-186, order no. 17,809, 70 NH PUC 708 (August 13, 1985); pursuant to *Re Small Energy Producers and Cogenerators,* DE 83-62, report and eighth supplemental order no. 17,104, 69 NH PUC 352, 61 PUR4th 132 (July 5, 1984) (hereinafter DE 83-62). On May 11, 1988 the commission issued order no. 19,091 (73 NH PUC 221) requiring NHC to appear before the commission on June 10, 1988 and show cause why approval of the long term rate filing, including the interconnection agreement and the rates set forth on the long term worksheet, should not be rescinded due to noncompliance with the commission's rate order. NHC filed testimony and exhibits on June 7, 1988.

At the June 10, 1988 hearing NHC agreed to file two late filed exhibits: 1) the FERC's current licensing schedule for the project and 2) an accounting of the amounts invested in the project. The commission required that this information be filed on July 1, 1988. PSNH requested an opportunity to brief the case.

On June 30, 1988, NHC filed, among other things, its late-filed exhibits. On July 1, 1988, PSNH filed its memorandum supporting a rescission of the long term rate order.

On June 30, 1988, NHC also filed a letter from the President of NHC to a commission staff (staff) member (Mr. Skip Johnson) dated January 14, 1988, and a reconstruction permit from the Water Resources Division of the New Hampshire Department of Environmental Services.

II. *Positions of the Parties*

At the June 10, 1988 hearing, NHC argued against the rescission of the rates. The staff did not support or oppose the rescission, but simply elicited testimony to create a complete record. PSNH contended that the rate should be rescinded.

NHC argued several reasons, among others, that the commission should not rescind the rate order. First, it averred that, in the commission's previous rescission cases,[1(26)] the commission erred in rescinding the rate order. Second, NHC contended that, unlike the Pitman and HDI-Hinsdale projects, the McLane dam does not have a competitor for or opposition to FERC licensing and the final FERC license is scheduled to be issued by September 1, 1988. Third, NHC asserted that the commission erred in finding 1987 as the last commercial operation date available under DE 83-62. Fourth, NHC argued that the loss due to delayed project start-up works only against the developer in the case of front-end loaded rates. Fifth, NHC stated that it has tentatively secured financing based on the DR 85-186, order no. 17,809. Sixth, it contended that the commission notified NHC that it had no problem with the project and in reliance on this finding NHC invested an additional $30,000 in pursuit of FERC licensing. Seventh, it asserted that the public interest in power supply reliability favors continuation of

the rate order. In summary, NHC asked that the original rates not be rescinded or, in the alternative, that the commission rescind the rate order and order a replacement fifteen year rate pursuant to *Re Small Energy Producers and Cogenerators,* DR 85-215, Order No. 17,838, 70 NH PUC 753, 69 PUR4th 365 (Sept. 5, 1985).

PSNH avers that NHC has not shown cause why its rates should not be rescinded. It argues that the new proposed on-line date is in derogation of the commission's order in DE 83-62. PSNH contends that NHC will not be able to meet its new proposed commercial operation date. Further, it argues that, contrary to NHC's assertions, NHC does not have an agreement for project insurance with the Town of Milford — the Town has an option to include NHC as an insured.

III. *Findings of Fact*

The commission staff has been monitoring the status of small power producer and cogenerator projects. Staff investigation indicated that the McLane dam was not on line at the time the commission issued its order to show cause. The original petition and the approval specified a commercial operation date of power year 1987. Power year 1987 ended August 31, 1987.

The following is a procedural history of the pertinent FERC licensing events. On February 4, 1985, Northeast filed a license application for the proposed McLane dam project no. 8924. On October 20, 1986, the Acting Director of the Office of Hydropower Licensing (Director) sent a letter to NHC requesting certain information necessary to evaluate the application. NHC failed to file this information by the deadline for filing (January 19, 1987). On February 13, 1987, NHC filed a request for a six month extension of the time to file the information. On March 12, 1987, the Director denied the request and dismissed the license application. On April 10, 1987, NHC filed an appeal of this denial. On November 20, 1987, the FERC denied the appeal because NHC had failed to file the requested information or an extension request before the deadline. *Re Northeast Hydrodevelopment Corp.,* Order Denying Appeal, Project No. 8924-001. The FERC determined that the information required included a request for state and federal agency comments. The FERC found that NHC had not been diligent in pursuing the license. It found that the applicant had not demonstrated extraordinary circumstances justifying the extension requested.

On December 9, 1987, the staff sent a letter to Normand Hebert (President of NHC) stating that it had received a FERC order denying appeal for an extension for the McLane dam license application. The letter requested information concerning the continuation of the project. On December 17, 1987, NHC sent the staff a copy of NHC's response to the FERC Director's October 20, 1986 request for additional information. On December 18, 1987, Normand Hebert sent a letter to the staff in response to the staff's December 9, 1988 letter. It requested that the commission not rescind the rate order for the following reasons:

1. NHC had successfully negotiated and signed a fifty year lease agreement with the Town of Milford for the McLane dam and related water rights,

2. NHC had funded the required PSNH interconnection study and anticipated no problems with interconnection, and

3. NHC had hired Washington D.C.

counsel and prepared a petition for rehearing of the FERC Order Denying Appeal.

On December 21, 1987, NHC filed a motion for rehearing of the FERC's November 20, 1988 order. On December 22, 1987, the staff sent a letter to NHC stating that it had reviewed the "application of additional information" and that the "Commission sees no problem with the McLane dam Project as presented."

On January 20, 1988, the FERC granted NHC's motion for rehearing solely for the purpose of allowing further consideration. *Re Northeast Hydrodevelopment Corp.,* Project No. 8924, Order Granting Rehearing for Purpose of Further Reconsideration. On February 8, 1988, the staff sent a letter to NHC to make sure NHC understood that the staff's December 22, 1987 letter was in response to NHC's December 17, 1987 letter and not NHC's December 18, 1987 letter. On April 18, 1988, the FERC issued an order granting the rehearing and reinstating the application as of the original filing date. *Re Northeast Hydrodevelopment Corp.,* Project No. 8924, Order Granting Rehearing.

NHC has not received its Federal Energy Regulatory Commission (FERC) license to develop the McLane dam. NHC has not yet begun construction of its project. NHC has not received any firm commitment for financing the project. NHC has not received a commitment to insure the project. All of the other projects that have rates under DE 83-62 are presently operating.

NHC has a lease from the Town of Milford for the McLane dam. However, one of the conditions of that lease is that NHC will perform repair work in accordance with New Hampshire Water Resources Board Order #159.03, dated February 5, 1985. Order #159.03 requires that these repairs be made by December 31, 1988. Nonrepair is a default under the contract.

On June 20, 1988, the Water Resources Division of the New Hampshire Department of Environmental Services issued permit no. 159.03H authorizing NHC to reconstruct the McLane dam. The reconstruction must be completed by June 20, 1991.

The FERC has indicated that it will take final action on the NHC's license application by September 1, 1988. NHC projects that it will be able to get financing by November 15, 1988, that it will take delivery of the turbine on June 15, 1989, that site work will begin on June 1, 1989, and that the project will be on line by August 31, 1989.

NHC has spent $15,000 attempting to get FERC approval for the project and to get the project on line. NHC admitted that it understands that the actions of the staff do not bind the commission's decisions.

III. *Commission Analysis*

We will address the arguments made in the same order they are discussed above. For the reasons stated below we rescind rate order no. 17,809.

We will not consider NHC's argument that *Pitman* and *Hinsdale* were incorrectly decided. These two cases address whether a project is mature for ratemaking purposes where the petitioner has not yet received his or her FERC license. This is not the basis for our rescission of the rate in this case. We rescind the rate because NHC has not complied with the terms of its rate order. For the same reason, we will dismiss NHC's arguments concerning the lack of FERC licensing competitors, the start year available under DE 83-62, and front-end loaded rates. The facts do not

show that NHC has received any firm commitment to finance or insure the project.

The facts do not show that NHC relied on the commission's alleged finding that it had no problem with the project for three reasons.

1. NHC filed its motion for rehearing before it received the staff's letter on which it purportedly relied.

2. The staff's letters specifically refer to the documents that they are in response to.

3. The staff does not have the authority to bind the commission and NHC knew that.

We will not consider the January 14, 1988 letter to Mr. Skip Johnson as evidence in this proceeding. Mr. Hebert proposed the letter to show that NHC had voluntarily surrendered the tariffs for the Weare Reservoir and Beaver Brook project in exchange for a commission decision to not rescind the McLane rate order. Mr. Hebert had written the letter before the hearing, however, he withheld the letter at the time of the hearing. He did not produce the letter under oath, did not lay an evidentiary foundation for the letter, and has not given the parties an opportunity to cross-examine concerning the letter. Therefore, we find it to be inadmissible.

We are very concerned with power supply reliability. It is not clear given NHC's record to date that it is a reliable source. However, if NHC has a viable, economic, and reliable project, it should be encouraged to request new rates under *Re Public Service Co. of New Hampshire*, DR 86-41, order no. 19,052 (Apr. 7, 1988) (73 NH PUC 117) or to negotiate a contract with PSNH.

The commission has previously found that a developer's failure to reasonably fulfill his obligations under his rate order, including the representation that beginning in a specified year he will sell the output from his project to Public Service Company of New Hampshire and provide reliable service over the life of the obligation, are grounds for the rescission of the developer's rate order. *Re D.J. Pitman International Corp.*, DR 85-139, Report and Order No. 18,667 (May 11, 1987) (72 NH PUC 166) and No. 18,719 (June 19, 1987) (72 NH PUC 232) *(Pitman)* and *Re HDI-Hinsdale Inc. — Upper Robertson Dam*, DR 84-347 Report and Order No. 18,668 (May 11, 1987) (72 NH PUC 169) and No. 18,718 (June 19, 1987) (72 NH PUC 230) *(HDI-Hinsdale)*. The commission found in *Pitman* and in *Hinsdale* that delays caused by the FERC licensing procedure were not sufficient justification for a waiver of the developer's obligations under his rate order. The commission also found in *Hinsdale* that failure to achieve commercial operation within the time constraints of the rate order indicates that the filing was premature and that

[h]aving 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 mature filing from HDI. Report and Order No 18,718 at 3 (72 NH PUC at 232).

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The latest start date available pursuant to DE 83-62 was power year 1987 (ending August 31, 1987). *HDI Hinsdale Inc.*, at 5. NHC has projected that it will be on line on August 31, 1989, a full two years beyond the latest start date available under DE 83-62, and most importantly, two full power years after the time approved by this commission. Therefore, it would be a preferential treatment to allow NHC to take under the DE 83-62 long term rate.

We will not allow NHC to receive a fifteen year rate under DR 85-215. Under DR 85-215, projects were subject to a maturity test. It would be discriminatory to allow NHC to take under the DR 85-215 rate when it's project is no more mature than projects that were not allowed a rate under 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 *Re Northeast Hydrodevelopment Corp.*, DR 85-186, Order No. 17,809 approving Northeast Hydrodevelopment Corporation's petition for long term rate, including the interconnection agreement and the rates set forth on the long term rate worksheet is rescinded.

By order of the Public Utilities Commission of New Hampshire this fifteenth day of August, 1988.

FOOTNOTES

[1]*Re D.J. Pitman International Corp.*, DR 85-139, Report and Order No. 18,667 (May 11, 1987) (72 NH PUC 166) and No. 18,719 (June 19, 1987) (72 NH PUC 232) *(Pitman)* and *Re HDI-Hinsdale Inc. — Upper Robertson Dam*, DR 84-347, Report and Order No. 18,668 (May 11, 1987) (72 NH PUC 169) and No. 18,718 (June 19, 1987) (72 NH PUC 230) *(HDI-Hinsdale)*, (these decisions are discussed infra p. 296).

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Re Northern Utilities, Inc.

DE 88-096
Order No. 19,147

New Hampshire Public Utilities Commission

August 22, 1988

ORDER nisi authorizing gas line construction for provision of new service.

CERTIFICATES, § 104 — Grant or refusal — Gas line construction.

[N.H.] A gas utility was authorized to begin construction of line, main or other apparatus in order to provide service to an area with no available gas service, because provision of such service was found to be for the public good by providing residents with an additional choice of an energy source.

By the COMMISSION:

ORDER

WHEREAS, on July 6, 1988, Northern Utilities a gas public utility operating in the Town of Plaistow, NH filed a Petition for authorization to serve an area in the Town of Atkinson, New Hampshire which is contiguous with the town line of Plaistow, and to begin the construction of line, main or other apparatus or appliances therein; and

WHEREAS, the additional service area is a residential development known as Bryant Woods Estates, together with

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public rights of way providing access thereto from the Company's existing system in Plaistow, along with property immediately adjacent to the said access routes; and

WHEREAS, the commission may grant such authorization under RSA 374:22 and RSA 374:26 only if such would be for the public good and not otherwise; and

WHEREAS, the Petition recites that there is a need for the requested service because the proposed area is unserved by natural gas and provision of such service would provide the residents thereof with an additional choice of an energy source; and

WHEREAS, the Petition recites that the Company is ready, willing and able to extend service to the area requested and to provide service under its existing tariffs, appropriately amended to reflect the additional service area; and

WHEREAS, after investigation of the anticipated revenue support for main extension costs and availability of supply to meet the additional demand in the requested service area, this commission is satisfied that the proposed expansion can be completed without negative impact

on the economics of the system; and

WHEREAS, the Petition is accompanied by an endorsement letter from the developer of Bryant Woods Estates and recites that appropriate officials of the Town of Atkinson have been fully informed of the proposal and have voiced no objection thereto; and

WHEREAS, it appears from the Petition and supplemental materials submitted that there is need for the proposed service, that the applicant has the ability to provide the service and that granting the application is otherwise for the public good; and

WHEREAS, the commission concludes that any interested parties should be afforded an opportunity to submit comments or to request an opportunity to be heard with respect to the Petition; it is hereby

ORDERED, NISI, that Northern Utilities, Inc. be, and hereby is, authorized to engage in the business of a gas utility and to construct and install necessary line, main and other associated apparatus in the area of the Town of Atkinson depicted in Attachment A to the Petition and appended hereto; and it is

FURTHER ORDERED, that Northern Utilities, Inc. 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 the Town of Atkinson, such publication to be made 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 the commission within 7 days after said publication; and it is

FURTHER ORDERED, that any interested party may file written comments or request an opportunity to be heard in this matter within 20 days after the date of this Order; and it is

FURTHER ORDERED, that this Order NISI will be effective 30 days from the date of this Order unless the commission provides otherwise in a Supplemental Order issued prior to the effective date; and it is

FURTHER ORDERED, that within 30 days after that effective date the company shall provide a map at a scale of 1:24,000 or an approved alternative scale which accurately depicts the area to be served; and revised tariff pages identifying the new service area by reference to this map.

By order of the Public Utilities Commission of New Hampshire this twenty-second day of August, 1988.

Attachment A

NORTHERN UTILITIES INC.

Description of Proposed Additional Service Area,
Town of Atkinson, New Hampshire.

Beginning at the terminus of Greenough Road in Plaistow, New Hampshire and the beginning of Line Brook Road in Atkinson, New Hampshire, said location being defined as the town line dividing the two communities; thence westerly on Line Brook Road to the intersection

of Line Brook Road and East Road; thence generally southerly on East Road to the Atkinson/Plaistow town line.

Meaning to describe the lots adjacent to those sections of Line Brook Road and East Road which include frontage on the gas main extension installed to serve Bryant Woods Estates; said lots being defined as listed below and as detailed on the attached map.

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

Town of Atkinson
Rockingham County
New Hampshire
Property Map No. Lot No(s).

15 9-18
15 20-24
15 27-28
15 31
10 1-7
5 Remaining Portion of Map 10, Lot 7

[Graphic Not Displayed Here]

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[Go to End of 52033]

73 NH PUC 301

Re West Epping Water Company

DE 87-93, DE 87-248
Order No. 19,149

New Hampshire Public Utilities Commission

August 23, 1988

MOTION for rehearing of order allowing water company to provide service as a water public utility; denied.

PUBLIC UTILITIES, § 121 — Water — Regulatory status.

[N.H.] The Division of Water Supply and Pollution Control of the Department of Environmental Services is required to approve construction, operation and maintenance of a public water system, which is defined as a system for the provision of public piped water for human consumption, if such system has at least 15 service connections or regularly serves an average of at least 25 individuals daily at least 60 days out of the year; because a water company

desiring to provide service as a public utility served only three residential customers who provided water to eleven residential tenants, it was not required to obtain permission from the Division of Water Supply and Pollution Control to operate a public water system.

PARTIES: As previously noted.

By the COMMISSION:

REPORT ON MOTION FOR REHEARING

On July 12, 1988, the Epping Water and Sewer Commission moved that the New Hampshire Public Utilities Commission rehear its decision to allow West Epping Water Company to provide service as a water public utility. We affirm our original decision and deny the motion for rehearing.

I. Procedural History and Motion for Rehearing

On June 27, 1988, the New Hampshire Public Utilities Commission (commission) approved the petition of West Epping Water Company to provide service as a water public utility in a limited area in the Town of Epping as of the date it incorporates. Report and Order No. 19,112. (73 NH PUC 243). On July 12, 1988, the Town of Epping Water and Sewer Commission filed a motion for rehearing (pursuant to RSA 541:3) of report and order no. 19,112.

The Water and Sewer Commission makes the following arguments in support of its motion.

1. The Water and Sewer Commission alleges that no evidence was produced showing that the petitioner had satisfied 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 pursuant to RSA 374:22, III.

2. The Water and Sewer Commission argues that order no. 19,112 fails to approve the proper service area because it includes an undeveloped eleven acre parcel adjacent to the Hickory Hill Road properties between the B&M Railroad and Route 101 that the petitioner purportedly said he had no interest in.

3. The Water and Sewer Commission avers that we did not consider its recommendations set forth in its June 24, 1988 letter to the staff counsel.

4. The Water and Sewer Commission contends that the commission did not adhere to its procedural schedule in docket DR 87-93, order no. 18,784 (August 5,

1987), thereby, denying the Epping Water and Sewer Commission the opportunity to review the documents that might have been filed under the schedule. It also asserts that the commission failed to consider a risk assessment study prepared by James Hobbs, Environmentalist that allegedly casts considerable doubt on the quality of water provided by the petitioner.

5. The Water and Sewer Commission asserts that the commission's report recites a fact that is

not true, to wit, that the voters of Epping defeated a $4.6 million proposal to extend service to West Epping. Then the Water and Sewer Commission makes an allegation as to the vote of the Town.

II. Commission Analysis

Based on the following analysis we reaffirm our original decision and deny the motion for rehearing. We will address the arguments of the Water and Sewer Commission in the order which they are presented above.

Pursuant to RSA 148-B:6 and 148-B:7, the Division of Water Supply and Pollution Control of the Department of Environmental Services is required to approve construction, operation, and maintenance of public water systems. Under RSA 148-B:1 a public water system is defined as a system for the provision of public piped water for human consumption, if such system has at least 15 service connections or regularly serves an average of at least 25 individuals daily at least 60 days out of the year. The petitioner currently serves three residential customers who provide water to eleven residential tenants, therefore, it is not required to obtain permission from Water Supply and Pollution Control and has satisfied the provisions of RSA 374:22, III.

Under N.H. Admin. Code, Wr 701.01 public water suppliers that use more than 20,000 gallons of water per day averaged over a thirty day period are required to register with the Water Resources Division of the Department of Environmental Services. With 14 customers, each customer in the system would have to use in excess of 1,400 gallons per day for the system to be required to register. In past commission decisions we have set rates based on an average usage per household of 250 gallons per day. Therefore, the petitioner would not be required to register with the Water Resources and has satisfied the provisions of RSA 374:22, III.

The petitioner stated on the record that the service territory requested is highlighted in yellow on Exhibit 3. The area in yellow on exhibit 3 includes the undeveloped 11 acre parcel adjacent to the Hickory Hill Road properties between the B&M railroad and Route 101. Therefore, the commission approved only the requested service area.

At the hearing on the merits, the commission asked the commission's staff to forward certain documents to Charles H. Morang, Esquire on behalf of the Town of Epping Water and Sewer Commission and indicated that it would give the Water and Sewer Commission one week to review and submit comments on the materials. On May 25, 1988, the staff forwarded these materials. On June 7, 1988, Mr. Morang filed a letter requesting that the commission delay its decision for two more weeks (until June 21, 1988) to give the Water and Sewer Commission time to review these materials. We issued our final report and order no. 19,112 on June 27, 1988. This report and order certified West Epping Water Company to provide water service, as further described therein. It was issued knowing the objection of the Water and

Sewer Commission to this certification.

If the Water and Sewer Commission had filed their comments in accordance with its request for extension its comments would have been filed on June 21, 1988. However, it did not file its comments until June 24, 1988. The Water and Sewer Commission did not ask for any additional

time to file comments. Therefore, the comments were untimely. In addition, the comments do not address the documents in question, instead, they seek to make an offer of proof and recommendations based on this offer of proof. Even if the facts asserted in the offer of proof are true, they do not show that the Town of Epping Water and Sewer Commission is willing and able to provide service. Therefore, our order would not be changed by the contents of the letter.

The commission consolidated dockets DE 87-93 and DE 87-248 by its order no. 18,983 (January 22, 1988) (73 NH PUC 28) and set a hearing for April 14, 1988. This gave the Water and Sewer Commission sufficient time to conduct discovery and to prepare for the hearing.

The Water and Sewer Commission did not provide the sworn testimony of James Hobbs, Environmentalist, nor did it establish the existence or qualifications of this alleged expert. The record indicates that while there are no existing problems with water quality, there is a potential problem if the petitioner draws too much water out of the wells. The petitioner is looking into installing meters to detect leaks to protect against drawing too much water out of the wells. We will monitor the situation to assure quality water service.

On the date of the hearing on the merits, the Water and Sewer Commission's representative was not in the hearing room when a witness for the company was testifying as to the status of the Town's plans concerning establishment of service in the proposed service area. He stated as follows

> The only knowledge that I have is that the major proposal that was proposed by the Epping Water and Sewer Commissioners, [was to] to extend water to West Epping at a payment cost of $4.6 Million (sic). That was defeated by the Budget Committee and it was passed on in amended form to the voters. It was defeated there, and there was a motion made for reconsideration, and the upshot of the whole thing was that the voters approved the testing of certain lands and the acquisition of options, and what not, on parcels of land that would be involved in the extension of water to West Epping.

This evidence is uncontroverted by any sworn testimony on the record. While the Water and Sewer Commission has made several offers of proof as to the status of this matter, it has provided no sworn testimony, affidavits, or official records to verify its allegations. Therefore, the above quote will serve as our findings of fact on this issue. Even if the allegations of the Water and Sewer Commission are true it has not shown that it is willing and able to provide service.

Under RSA 541:3 the commission may grant a motion for rehearing if the movant states a good reason in the motion. Based on the above analysis, we do not find a good reason for rehearing our decision. Thus, we affirm our original decision and deny the motion for rehearing. Our order will issue accordingly.

ORDER

Upon consideration of the foregoing

Report on Motion for Rehearing, which is made a part hereof, it is hereby

ORDERED, that the Town of Epping Water and Sewer Commission's motion for rehearing of our report and order no. 19,112 is denied.

By order of the Public Utilities Commission of New Hampshire this twenty-third day of August, 1988.

Dissenting Opinion of Commissioner
Linda G. Bisson

I would grant the motion for rehearing.

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NH.PUC*08/24/88*[52034]*73 NH PUC 304*Fuel Adjustment Clause

[Go to End of 52034]

73 NH PUC 304

Re Fuel Adjustment Clause

Parties: Municipal Electric Department of Wolfeboro and Woodsville Water and Light Department

DR 88-122
Order No. 19,151

New Hampshire Public Utilities Commission

August 24, 1988

ORDER permitting the revised monthly fuel adjustment clause rates of two municipal electric utilities to become effective.

AUTOMATIC ADJUSTMENT CLAUSES, § 5 — Authorization — Fuel adjustment clause rates — Municipal electric utilities.

[N.H.] The revised monthly fuel adjustment clause rates of two municipal electric utilities were permitted to become effective.

By the COMMISSION:

ORDER

WHEREAS, the Commission, in correspondence dated March 2, 1983, notified Connecticut Valley Electric Company, Inc., Municipal Electric Department of Wolfeboro, Woodsville Power and Light Department, and Littleton Water & Light Department that FAC hearings will not be automatically scheduled unless requested by said utilities maintaining a monthly FAC; and

WHEREAS, no utility maintaining a monthly FAC requested a hearing, and

WHEREAS, the Wolfeboro tariff, Section C, provides for a Fuel Adjustment Charge, per Hundred Kilowatt Hours, of $.079, which is a calculation error that has no effect on the note which states that the Fuel Adjustment Charge of $.79 per 100 KWH will be applied to all bills in the month of August; it is

ORDERED, that 93rd Revised page 11B of the Municipal Electric Department of Wolfeboro tariff, NHPUC No. 6 — Electricity, providing for a fuel surcharge of $.79 per 100 KWH for the month of August, 1988 be, and hereby is, permitted to become effective August 1, 1988; and it is

FURTHER ORDERED, that Wolfeboro correct the calculation being shown in Section C for future tariff page submission; and it is

FURTHER ORDERED, that 143rd Revised Page 10B of the Woodsville Water and Light Department tariff, NHPUC No. 3 — Electricity, providing for a fuel surcharge credit of $(.28) per 100 KWH for the month of August, 1988, be, and hereby is, permitted to become effective August 1, 1988.

By Order of the Public Utilities Commission of New Hampshire this twenty-fourth day of August, 1988.

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NH.PUC*08/24/88*[52035]*73 NH PUC 305*Donna L. Toto v. Public Service Company of New Hampshire

[Go to End of 52035]

73 NH PUC 305

Donna L. Toto
v.
Public Service Company of New Hampshire

DC 87-139
Order No. 19,152

New Hampshire Public Utilities Commission

August 24, 1988

ORDER vacating prior decision as must.

PROCEDURE, § 31 — Disposal of issues — Stipulations by parties.

[N.H.] Where an electric utility and a customer had settled their dispute, two orders previously issued on the matter were vacated.

By the COMMISSION:

ORDER

WHEREAS, the commission found in favor of the complainant, Donna Toto, in her complaint against Public Service Company of New Hampshire (PSNH) in the above referenced matter in order number 19,061 dated April 13, 1988; and

WHEREAS, PSNH filed a motion for rehearing pursuant to RSA 541:3 on May 3, 1988; and

WHEREAS, the commission granted PSNH's motion for rehearing by order number 19,100 dated May 31, 1988, therein scheduling additional hearings on the complaint; and

WHEREAS, the complainant advised the commission on August 12, 1988 that she and PSNH have fully settled the matter in dispute thereby rendering moot said orders number 19,061 (73 NH PUC 174) and 19,100; it is

ORDERED, that the said order number 19,061 dated April 13, 1988 and order number 19,100 dated May 31, 1988, are hereby vacated.

By order of the Public Utilities Commission of New Hampshire this twenty-fourth day of August, 1988.

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NH.PUC*08/25/88*[52036]*73 NH PUC 305*Southern New Hampshire Water Company, Inc.

[Go to End of 52036]

73 NH PUC 305

Re Southern New Hampshire Water Company, Inc.

DR 87-135
Fourth Supplemental Order No. 19,153
New Hampshire Public Utilities Commission
August 25, 1988

ORDER approving water rate settlement agreement.

RATES, § 597 — Water rate design — Special factors — Stipulation agreement — Newly attached service areas.

[N.H.] The commission approved a stipulation agreement setting rates for a water utility that had recently purchased and attached 14 small water systems to its core system; the revenue levels provided by the stipulated rates were found to be just and reasonable despite the fact that they provided for significant increases in the rates for customers within the recently attached water systems; the size of the increase was found reasonable because it was primarily related to the expense and investment involved in providing better service and resulted in the recently attached customers paying rates identical to rates paid by other customers on the core system.

APPEARANCES: James C. Hood, Esquire of McLane, Graf, Raulerson & Middleton for Southern New Hampshire Water Company, Inc.; Richard Lewis, for the Green Hills Residents Association; Faye Halsband, *pro se;* Gregory Michael, Esquire for the Brook Park Estate Association; Michael Holmes, Esquire for the Office of Consumer Advocate; and Martin C. Rothfelder, Esquire for the Commission and Commission Staff.

By the COMMISSION:

REPORT AND ORDER APPROVING SETTLEMENT

I. *Introduction and Summary*

On August 13, 1987, Southern New Hampshire Water Company, Inc. (company) filed with the commission a request for an increase of $310,227 or 204.1% in its permanent rates for the 14 individual systems that make up its Policy Division. On July 22, 1988 the commission received a settlement entitled Stipulation Agreement from all parties in this matter designed to be dispositive of all issues in this case. The commission finds that based upon the evidence presented in the case, the settlement provides for rates that are just and reasonable and approves that settlement as a resolution of this matter as is further described herein.

II. *Procedural History*

On August 13, 1987, Southern New Hampshire Water Company, Inc. filed certain revisions in its water tariff NHPUC No. 1 — Water, providing for an increase in rates for the customers in its "Policy Division" which were designed to increase annual revenues by approximately $310,227. The Policy Division as used in this Report and Order and the company's tariffs consists of the 14 systems purchased by the company from Policy Water Systems, Inc. in the sale addressed in commission docket DE 85-354. The individual systems and the municipality in which they are located is as follows: Beacon Hill (Derry), Beaver Hollow (Sandown), Birchville (Londonderry), Brook Park (Londonderry), Gage Hill (Pelham), Green Hills (Raymond), Liberty Tree (Raymond), Maple Hills (Derry), Nesenkeag (Londonderry), Oakwood (Derry), R&B (Londonderry), Rolling Hills (Plaistow), Scobie Pond (Derry) and Stonegate (Pelham).

On September 4, 1987, the company filed a petition for temporary rates requesting the then effective rates be fixed as temporary rates for the Policy Division. On September 10, 1987 the commission issued Order No. 18,822 to suspend the proposed permanent rate revisions and schedule a prehearing conference for November 3, 1987. On the same date, the commission issued an order of notice scheduling a hearing on the merits of the temporary rate request. The commission held that hearing as scheduled on November 3, 1987.

On November 4, 1987, the company filed proposed permanent tariffs that are identical with the tariffs filed to initiate this case; except that the new tariffs bore an effective date of November 4, 1987. On November 25, 1987, the commission issued Supplemental Order No. 18,920 which set the procedural schedule establishing, *inter alia,* a hearing to begin May 31, 1988. On December 9, 1987, Report and Second Supplemental Order No. 18,932 (73 NH PUC

566) was issued authorizing temporary rates at current levels in the Policy Divisions. The order also suspended the tariff filed on November 4, 1987.

On April 13, 1988 the company filed a petition requesting an increase in its temporary rates and rate design changes for the time period remaining until resolution of the permanent rate case. On April 29, 1988, the commission issued Third Supplemental Order No. 19,074 setting the April 13 temporary rate petition for hearing on May 31, 1988.

The commission held hearings on the rate requests at its offices in Concord on May 31, June 6, 7, 8, 9, 20, July 1, 7, 11, and 12, 1988. The commission also held evening public hearings regarding permanent rates at the Derry Village School in Derry on April 6, 1988 and at the Senior Center in Raymond on May 18, 1988. Settlement conferences organized by the active parties were held prior to the hearings, on July 18 and on July 21, 1988. The parties presented the commission with statements by counsel and evidence in support of the settlement on July 22, 1988. The settlement document entitled “Stipulation Agreement” was formally filed on July 26, 1988.

III. *Commission Analysis*

During the course of these proceedings, the commission heard testimony relating to the rate base, expenses, revenues, rate of return, and quality of service of this company's Policy Division. In addition, the commission heard testimony related to various rate design, billing and long range planning issues. In addition, the commission received substantial numbers of exhibits that resulted from discovery. Large amounts of useful material were developed via discovery from the Office of Consumer Advocate.

The commission sets rates for most utilities based upon rate base (a company's reasonable investment in plant that is used and useful), a reasonable expense level and rate of return appropriate for a particular utility. *See: Re Public Service Co. of New Hampshire*, 130 N.H. 265, 270, 271, 92 PUR4th 546, 539 A.2d 263 (1988). Based upon the evidence presented in this case, the commission finds that rates designed to provide the revenue levels shown in the Stipulation Agreement, exhibit D, are just and reasonable. While such rates provide significant increases for all customers within the fourteen systems that make up Southern New Hampshire Water Company's Policy Division, the size of the increase is primarily related to the expense and investment involved in providing better water service to those water systems and customers. The commission notes that these systems started from relatively low rate levels. The commission hereby includes the text of the Stipulation Agreement and exhibit D thereto as an appendix to this report and order.

With regard to rate design, the commission finds the rate design in the settlement to be reasonable and to be supported by the testimony and exhibits in this docket. Particularly of note is that the customers whose plant has become attached to a larger “core system” of the company receive permanent rates identical to the other customers on that core system. The company's service of three sets of policy system customers (Birchville, Scobie Pond, and R&B) by attaching them to core systems constitutes a reasonable way to provide safe and adequate service to these customers. The rate adjustments in a rate case such as this one should treat customers

who have recently been attached to a core like other customers on the core. For these reasons, this rate design action is just and reasonable — even though it provides those customers who are newly attached to a core system with a somewhat higher rate

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increase than others in the Policy Division. Under the specified revenue requirement and rate design, the permanent rates that result are shown in Table 1.

(one page to be shot)

in this page

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The Settlement also provides for recoupment of the difference between the temporary rates in effect since December 9, 1987 until the implementation of these permanent rates. Under the settlement, such recovery is tailored to each individual Policy Division system's specific circumstance. This is necessary because the different billing schedules of the individual systems cause different systems to have temporary rates for different time periods. In addition, certain systems will not pay any recoupment. This overall proposal for recoupment is not only just and reasonable, but is better than any proposal before the commission in the testimony and exhibits and is a particularly positive component of the settlement. Rates for said recoupment shall be added to the permanent rates shown in table 1.

The settlement also deals with various long range problems and potential commission action in future proceedings. The issues resolved therein were logically related to the issues in this case and were reasonable for the parties to include therein. In addition, based upon the evidence presented in this case, the commission believes the resolution of those issues is reasonable. Thus, with regard to those issues, the commission approves of this settlement.

On one such item designated “XII. Future Rate Case Filing”, the parties provide for specific information related to rate design that the company shall file in a future rate case filing. On that topic, the settlement states that “the filing of such information shall not in any way prejudice the company's nor any other party's right to request that rates be set in a different manner”. The commission's approval of receiving rate information in the manner specified therein also does not restrict the commission in setting rates or requesting additional information, calculations or related materials.

IV. *Conclusion and Summary*

Thus, based on the foregoing, the commission shall approve the settlement presented in this case. All other petitions, requests, or motions in this docket not previously ruled upon are hereby denied. Our order will issue accordingly.

SUPPLEMENTAL ORDER

Based upon the foregoing REPORT AND ORDER APPROVING SETTLEMENT and the appendix thereto, which are hereby incorporated herein by reference, it is hereby

ORDERED, that Southern New Hampshire Water Company, Inc. shall be authorized to file rates designed to provide said company with an opportunity to earn total revenues in its fourteen Policy Divisions of $310,041, or an increase of $153,917 from test year revenues in this case; and it is

FURTHER ORDERED, that the company provide revised tariff pages specifying the 11 Policy systems covered by the rates on table 1, page 6; and it is

FURTHER ORDERED, that the revised tariff pages clearly note that the Scobie Pond and Birchville systems will be charged the Londonderry core rate and that the R&B Development will be charged the Hudson core rate; and it is

FURTHER ORDERED, that the Southern New Hampshire Water Company, Inc. file tariff pages and full documentation computing the shortfall in temporary rates since December 9, 1987 in accordance with the foregoing report; and it is

FURTHER ORDERED, that the rates approved hereby shall be designed in

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accordance with the Stipulation Agreement entered into by the active parties in this case and identified in this report on Table 1, and as specifically provided for in exhibit D thereto; and it is

FURTHER ORDERED, that all requests, applications, or motions not previously ruled upon in this docket are hereby denied.

By order of the Public Utilities Commission of New Hampshire this twenty-fifth day of August, 1988.

Appendix to Report
and Order No.
19,153

STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION

DR 87-135

Southern New Hampshire
Water Company, Inc.
Increase in Rates

STIPULATION AGREEMENT

I. AGREEMENT

This Stipulation Agreement ("Agreement") entered into between and among Southern New Hampshire Water Company, Inc. ("Company"), the Staff ("Staff") of the New Hampshire Public Utilities Commission ("Commission"), the Office of the Consumer Advocate ("Consumer Advocate"), Richard Lewis, and Fay Halsband ("Intervenors"), (hereinafter sometimes

collectively referred to as “Parties”), for the purposes and subject to the terms and conditions hereafter stated.

II. INTRODUCTION

On August 13, 1987, the Company filed with the Commission a request for a $310,227, or 204.1%, overall increase in its permanent rates for its so-called Policy Divisions in the form of proposed revised pages 6, 7 and 8 of its Tariff No. 1 for Southern New Hampshire Water Company, Inc. (“NHPUC No. 1”) with respect to General Metered Service — Policy Division, and General Unmetered Service — Policy Division. The proposed increase was to be effective for bills rendered on and after September 13, 1987. The Commission suspended the proposed Tariff pages by Order No. 18,882, and by Order No. 18,932 (73 NH PUC 566) established the Company's present rates as temporary rates as of December 9, 1987. On November 25, 1987, the Commission set a hearing schedule to govern this case.

Representatives of the Company, the Staff, the Office of the Consumer Advocate and Intervenors, specifically Green Hills Association, Inc. and Mrs. Halsband, met to discuss the possibility of stipulating to any and all issues relating to the Company's request for an increase in its permanent rates. Those discussions were inconclusive and hearings on the merits of the Company's request for a permanent increase in rates were held. Prior to and during the course of the hearings meetings were held between representatives of the Company and the Consumer Advocate with the knowledge and consent of Staff's counsel, and on July 18, 1988 and again on July 21, 1988, all active parties met to finalize preliminary settlement agreement that had been reached earlier between the Company, the Consumer Advocate, and the active Intervenors. The within Agreement is the result of those meetings and other communications.

III. SUBJECT MATTER OF THIS AGREEMENT

This Agreement relates to the Company's rate base, its cost of capital, and its rate of return, as well as other related revenue, expense and rate base issues.

IV. ACQUISITION ADJUSTMENT

The Company shall permanently exclude from its rate base the $400,000 purchase price paid by the Company pursuant to a certain Purchase and Sales Agreement dated August 23, 1985 by and between Southern New Hampshire Water Company, Inc. and Policy Water Systems, Inc., as amended, that was the subject of DE 85-354, as well as any amortization or depreciation on such amount.

V. SALE OF LAND

Any future proceeds received from any sale or condemnation of land purchased by the Company from Robert Christian, Policy Water Systems, Inc., or Policy Well & Pump Co. on January 6, 1986 and located at the Scobie Pond, Birchville, Maple Hills, or Oakwood Systems shall be distributed as follows:

A. All such proceeds up to a total of $400,000 shall be retained by the Company, booked below the line without any reduction in the Company's rate base and be distributable at

the Company's discretion to the Company's stockholders;

B. All such proceeds over and above $400,000 shall be distributed 25% to the Company below the line for distribution to the Company's stockholders and 75% to the Company on behalf of its customers to be used to reduce the Company's rate base or rate bases utilized to set rates for the above-named systems.

VI. PROPERTY TAXES

So long as they are reasonably used and useful for utility purposes, the Company shall continue to book property taxes on those properties referred to in Paragraph V as an above-the-line expense.

VII. RATE OF RETURN

Subject to the approval and adoption by the Commission of the provisions of this Agreement and for the purposes of this docket and DR 88-055, the Parties stipulate and agree that the Company's cost of long-term debt will be 11.90%, its cost of short term debt will be 9% and its cost of equity will be 11.44%. It is agreed that those cost rates will be applied to a capital structure consisting of 41.22% long term debt, 20.51% short term debt and 38.27% equity, to produce an agreed overall rate of return of 11.14%.

VIII. EXTRAORDINARY EXPENSES

The so-called extraordinary expenses reflected by the Company in its rate case filing as “Deferred Debits” for the test year period shall be treated as follows:

A. A total of $25,281 of the extraordinary expenses shall be added to rate base as capital items and placed into depreciation accounts as set forth on Exhibit A hereto;

B. The remainder of the test year extraordinary expenses attributable to the Policy Divisions, except Birchville, R & B Development and Scobie Pond, totalling $190,483, shall be amortized and collected in permanent rates over 15

years. The unamortized portion of such extraordinary expenses shall not be included in working capital or rate base. Those extraordinary expenses attributable to Birchville, R & B Development and Scobie Pond, totalling $38,852, shall be similarly amortized and recovered in their new core rates.

C. The Company shall discontinue the practice of booking any expenses as deferred debits as of December 31, 1987.

IX. CHANGES IN RATE CASE FILING RECOMMENDED BY STAFF

The Company shall make the following changes in its rate case filing as recommended by Staff:

A. The Company shall recognize additional revenues of $4,118 in accordance with finding number 10 of Staff's Financial Audit of the Company dated April 5, 1988 (“Audit”);

B. The Company shall utilize an FICA rate of 7.51% for purposes of this rate case;

C. The Company shall adjust its filing to reflect actual property taxes incurred during the test year;

D. The Company shall apply its depreciation schedules (as opposed to those previously used by Policy Water Systems, Inc.) to all depreciable utility assets acquired from Policy Water Systems, Inc. on January 6, 1986;

E. The Company shall utilize a federal income tax rate of 34% and a New Hampshire Business Profits tax rate of 8% in its revenue calculation in this rate case;

F. The Company shall remove from its test year administrative and general expenses $549 reflecting the personal use of Company vehicles by its Executive Vice-President, Vice-President of Engineering and Superintendent in accordance with Audit finding number 11;

G. The Company shall adjust its finding in this case to reflect that it did not acquire certain identifiable assets from Policy Well Systems, Inc. in accordance with Audit finding numbers 2 and 3;

H. The Company shall amend its Tariff pages to reflect the following:

(a) The reference to a price per gallons in the General Metered Service-Policy Division shall be deleted;

(b) The language of the Company's Tariff pages referencing its obligations to maintain certain line pressures in its systems shall be amended or added, as the case may be, to reflect the relevant regulation of the NHPUC.

(c) The Tariff pages shall reflect the Policy systems to which they apply.

X. LIBERTY TREE PAYMENT IN LIEU OF LITIGATION

The Company shall reduce its rate base associated with the Liberty Tree system by the $100,000 appropriated by the State of New Hampshire for damage done to the Liberty Tree well field by the New Hampshire State Department of

Transportation. It is the Parties, understanding that this payment is being made by the State of New Hampshire to the Company in response to a claim asserted by the Company for damages to the Liberty Tree well field. In the event the Company does not receive the said payment or only a portion thereof, an appropriate adjustment to rate base will be made in the next rate case referenced in Paragraph XII below.

XI. RATE BASE ADDITIONS

The reasonable costs incurred by the Company to interconnect the Birchville, R & B Development and Scobie Pond systems to the Londonderry core, Hudson core and Town of Derry, respectively, shall be added to the Company's rate base in the rate case referenced in Paragraph XII below.

XII. FUTURE RATE CASE FILING

The Company's next request for a rate increase will cover all of the Company's customers and will include the cost of service allocations and any rate design principles adopted by the Commission in docket DR 88-055. The Company agrees to not file another rate case prior to January 1, 1989 or the issuance of a Report and Order in DR 88-055, whichever is later. If the Commission, due to settlement of docket DR 88-055 or otherwise, does not set cost of service allocations or adopts any new rate design principles in DR 88-055 or any related docket, then the Company in its next rate case will file for uniform system-wide rates, without minimum usage levels, and shall as an alternative file uniform “core” rates and a uniform “satellite” rate. The Company's rate case filing in such case will adopt the depreciation study to be conducted by the Company pursuant to Paragraph XVI below. While the Company agrees to file its next rate case on the basis set forth above, the filing of such information shall not in any way prejudice the Company's nor any other party's right to request that rates be set in a different manner.

XIII. RATE CASE EXPENSE

Rate case expenses shall be recovered in accordance with the Company's Exhibit IV-1 Schedule 1 attachment entitled “Administrative & General — Pro Forma Adjustment” as filed in the August 13, 1987 filing.

XIV. TARIFF PAGES

The Tariff pages to be filed by the Company and reflecting the rates resulting for the agreements contained herein shall reflect an equal percentage increase in rates for all Policy systems other than Scobie Pond, Birchville, R & B Development, and Green Hills. Customers at the Scobie Pond and Birchville systems shall be charged the same rates as are charged to customers of the Londonderry core system. Customers at R & B Development shall be charged the same rate as is charged to customers of the Hudson core system. Customers at Green Hills shall be charged a quarterly charge based on the Policy Division's tariffed metered rate and calculated upon a quarterly usage of 1800 cubic feet.

XV. EFFECTIVE DATE OF RATES AND RECOUPMENT OF TEMPORARY RATE SURCHARGE

Except for the Scobie Pond, Birchville, and R & B Development systems, rates for all systems shall be effective for service

rendered on or after December 9, 1987, and recoupment of the difference between temporary and permanent rates shall be recovered over a two (2) year period through a surcharge which shall be allocated to customers based on each 100 cubic feet of usage. Except for Birchville, R & B Development and Scobie Pond, recoupment rates for each Policy system shall relate to the actual period of time that such system was billed under temporary rates.

The new rates for Scobie Pond, Birchville, and R & B Development, as set forth in Paragraph XIII above, shall be effective for service rendered as of the date on which each such system was connected to its respective core system (which is assumed to be: Birchville and R & B Development — June 1, 1988; Scobie Pond — January 1, 1988). There shall be no recoupment from any customer's rates of the difference between temporary and permanent rates for the

Birchville and R & B Development systems. There shall be a surcharge of the difference between the permanent rate for the Scobie Pond system and the temporary rates for that system for the period since January 1, 1988. The surcharge for the Scobie Pond system shall be recovered over a two (2) year period in the same manner as for the other Policy systems for which a temporary rate surcharge is being recovered.

XVI. DEPRECIATION STUDY

The Company shall have an independent (i.e. by a nonaffiliated person or entity) depreciation study performed prior to the filing of its next rate case. The Company shall be entitled to recover the reasonable cost of any such depreciation study.

XVII. ACTION PLAN FOR POLICY SYSTEMS

On or before December 31, 1988, the Company shall file with the Staff and the Office of the Consumer Advocate a plan setting forth the Company's short-term and long-term proposals for capital improvements to each of the Policy Divisions, and including proposed retirements of plant and equipment, the estimated dates on which the capital improvements are expected to be completed, and the Company's best estimate of the potential rate impact of such improvements and retirements.

XVIII. BILLING

The Company shall bill all customers of the Policy Division on a quarterly basis (except to the extent that customers at the Scobie Pond, Birchville, and R & B Development systems may be subject to a different billing frequency under the core system tariffs). The Company shall, within three (3) months of approval of this stipulation or as soon as such information can practicably be provided, whichever is earlier, provide in its bills a calculation demonstrating the conversion of cubic feet to gallons.

XIX. EFFECTIVE DATE

If approved by the Commission, the rates established by this Agreement shall be approved for purposes of billings rendered on and after August 1, 1988.

XX. INTEREST ON CUSTOMER BILLS

The Company shall amend the tariff for the Policy Division to provide that customers shall pay interest on overdue bills

at the rate and in the manner provided by NHPUC Regulations.

XXI. STIPULATED RATE BASE

For purposes of the Commission's final Order in this proceeding, the overall rate of return of 11.14% to which the Parties have stipulated shall be applied to a 13-month average rate base of $256,092, calculated as shown on Exhibit B, attached hereto and made a part hereof. The foregoing number is attributable to the Policy systems excluding Birchville, R & B Development and Scobie Pond.

XXII. STIPULATED NET UTILITY OPERATING INCOME (LOSS)

It is stipulated and agreed by the Parties hereto that, for the purposes of this proceeding, the test period net utility operating income (loss) shall be ($32,260), as shown on Exhibit C, attached hereto and made a part hereof. The foregoing number is attributable to the Policy systems excluding Birchville, R & B Development and Scobie Pond.

XXIII. STIPULATED REQUIRED INCREASE IN REVENUE

It is stipulated and agreed by the Parties hereto that, for the purposes of this proceeding, the application of the foregoing agreements regarding cost of equity, cost of debt, rate base and net utility operating income will produce a required increase in revenue for the Company as shown on Report of Proposed Rates Filed, attached hereto as Exhibit D.

XXIV. GENERAL CONDITIONS

This Agreement is subject to the following conditions:

A. In view of the importance to the Parties that they know whether the contents of this stipulation will be accepted by the Commission and the need of all Parties and the Commission to complete the ongoing hearings in a timely manner, this Agreement shall be presented to the Commission on Friday, July 22, 1988 for acceptance and approval, and the Parties hereby request that the hearing on the merits not resume until the Commission has made its determination.

B. Except for items specifically provided for herein, the Commission's acceptance of this Agreement does not constitute continuing approval of or precedent regarding any particular principle or issue in this proceeding, but such acceptance does constitute a determination that (as the parties believe) the adjustments and provisions set forth herein are justified and appropriate and that base rates designed to yield the revenue contemplated by this Agreement will be just and reasonable under all the circumstances.

C. The making of this Agreement establishes no principles or precedents affecting any party in any future proceedings except as expressly stated herein.

D. The parties stipulate and agree that their respective obligations hereunder are conditioned upon the Commission's acceptance and approval of all the terms of this Agreement. In the event the Commission does not accept and approve this Agreement in its entirety, any party shall have the right to rescind this Agreement. If the Agreement is withdrawn or rescinded, neither the

Agreement nor any of the negotiations which resulted in it shall constitute any part of the record in this proceeding or be used for any purpose whatsoever.

E. The discussions that have produced this Agreement have been conducted on the explicit understanding that all offers of settlement and discussions relating thereto are and shall be privileged, shall be without prejudice to the position of any party or participant presenting any such offer or participating in any such discussion, and are not to be used against any party in any manner.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed in their respective names by themselves or their agents, each being fully authorized so to do on behalf of his or her principle.

SOUTHERN NEW HAMPSHIRE
WATER COMPANY, INC.

By: J. Michael Love
President

STAFF OF PUBLIC UTILITIES
COMMISSION

By: Martin C. Rothfelder
General Counsel for New Hampshire
Public Utilities Commission

OFFICE OF THE CONSUMER
ADVOCATE

By: Joseph W. Rogers
Assistant Consumers Advocate

GREEN HILLS ASSOCIATION, INC.

By: Richard Lewis, duly authorized

Fay Halsband, Limited Intervenor

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NH.PUC*08/26/88*[52037]*73 NH PUC 320*Kearsarge Telephone Company

[Go to End of 52037]

DR 87-110
Order No. 19,154

New Hampshire Public Utilities Commission

August 26, 1988

ORDER authorizing an independent telephone carrier to increase its rates.

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1. RATES, § 532 — Telephone rate design — Stipulation — Independent telephone company.

[N.H.] In an independent telephone company rate case, the commission accepted a stipulation agreement on net operating expenses, rate base, rate structure, and a rate surcharge reflecting the difference between temporary and permanent rates. p. 322.

2. RATES, § 120 — Reasonableness — Statutory considerations.

[N.H.] Pursuant to state statute RSA 378:27, utility rates must be sufficient to yield at least a reasonable return on the cost of used and useful property, less accrued depreciation. p. 325.

3. RETURN, § 15 — Reasonableness — Statutory considerations — Just and reasonable standard.

[N.H.] State statute requiring that utility rates must be sufficient to yield at least a reasonable return on the cost of used and useful property, less accrued depreciation, does not preclude the commission from receiving and considering any evidence which may be pertinent and material to the determination of a just and reasonable rate of return; the just and reasonable standard creates a zone of reasonableness between the lowest rate that is not constitutionally confiscatory and the highest rate that is not excessive and extortionate. p. 325.

4. RETURN, § 24 — Reasonableness — Balancing of investor and consumer interests — Maintenance of credit and attraction of capital.

[N.H.] The commission must balance the interests of the investors and the consumers in determining a return that will allow the utility to maintain its credit and attract the necessary capital. p. 325.

5. RETURN, § 25 — Reasonableness — Returns of other enterprises — *Hope* case.

[N.H.] Under the standard established by the United States Supreme Court in the case of *Federal Power Commission v. Hope Nat. Gas Co.*, 320 U.S. 591, 51 PUR NS 193, 88 L.Ed. 333, 64 S.Ct. 281 (1944), for a return not to be confiscatory it must be commensurate with returns on investments in other enterprises having corresponding risks. p. 325.

6. RETURN, § 26 — Factors affecting reasonableness — Cost of capital.

[N.H.] In determining a reasonable rate of return on utility property, the cost of capital is an important factor to be determined and considered by the commission in the exercise of fair and enlightened judgment having regard to all relevant facts. p. 325.

7. RETURN, § 15 — Reasonableness — Method of determining rate of return — End result — *Hope* and *Bluefield* decisions.

[N.H.] Neither the requirements of *Federal Power Commission v. Hope Nat. Gas Co.,* 320 U.S. 591, 51 PUR NS 193, 88 L.Ed. 333, 64 S.Ct. 281 (1944), and *Bluefield Water Works & Improv. Co. v. West Virginia Pub. Service Commission,* 262 U.S. 679, PUR1923D 11, 67 L.Ed. 1176, 43 S.Ct. 675 (1923), nor any New Hampshire cases, require the commission to use the comparable earnings approach or any other specific formula for determining rate of return; the only limitation on the commission's discretion is that the methodology employed must produce a result that is neither confiscatory nor exploitative. p. 325.

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8. RETURN, § 26.4 — Factors affecting reasonableness — Cost of equity capital — Methodological issues.

[N.H.] A rate of return on common equity of 10.77% was accepted as just and reasonable in an independent telephone company rate case; it was found that such a return (1) would allow the company to maintain and support its credit and attract capital, (2) was commensurate with the returns available to investors in other enterprises of comparable risk, and (3) would assure confidence in the financial integrity of the company; moreover, a rate of return on equity of 10.77% was found to be consistent with recently authorized returns for similar companies in New Hampshire and other jurisdictions. p. 335.

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i. RETURN, § 15 — Reasonableness — Constitutional standards — Rate adequacy — *Hope* case.

[N.H.] Discussion, in an independent telephone company rate case, of a New Hampshire Supreme Court decision, *Re Public Service Co. of New Hampshire,* 130 N.H. 265, 92 PUR4th 546, 539 A.2d 263 (1988), which held that the import of the United States Supreme Court decision, *Federal Power Commission v. Hope Nat. Gas Co.,* 320 U.S. 591, 51 PUR NS 193, 88 L.Ed. 333, 64 S.Ct. 281 (1944), is that the constitution is only concerned with the end result of a rate order — i.e. that it be just and reasonable; the particular rate-making methodology employed by the regulatory agency is, for the most part, constitutionally irrelevant; the only limitation on the methodology is that it produce neither confiscatory nor exploitative rates. p. 325.

ii. RETURN, § 26.4 — Factors affecting reasonableness — Cost of equity capital — Factual and methodological issues.

[N.H.] Discussion of various factual and methodological issues relevant to a determination of the appropriate cost of common equity capital for an independent telephone company. p. 327.

iii. RETURN, § 26.4 — Factors affecting reasonableness — Cost of equity capital — Methodological issues.

[N.H.] Discussion, in an independent telephone company rate case, of the methods employed and assumptions made by witnesses in making their cost of common equity determinations; includes discussion of the discounted cash flow methodology (with particular emphasis on the appropriate method for determining dividend yield), the comparable earning methodology, and the risk premium approach. p. 330.

APPEARANCES: Dom S. D'Ambruoso, Esq. of Ransmeier and Spellman on behalf of Kearsarge Telephone Company, Mary C.M. Hain, Esq. on behalf of the Staff of the New Hampshire Public Utilities Commission.

By the COMMISSION:

REPORT ON REQUEST
FOR PERMANENT RATES

This report concerns the petition of Kearsarge Telephone Company (Kearsarge or company) for permanent rates. The report presents the procedural history of the case. It provides findings of fact and analysis. This report and third supplemental order allows Kearsarge to put into effect higher permanent rates. The report and order does not approve rates at the requested level.

I. *Procedural History*

On June 12, 1987, Kearsarge Telephone Company filed a notice of intent to file a

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rate increase request. On July 17, 1987, Kearsarge filed requests for a permanent rate increase and temporary rates at current permanent rate levels. It also filed supporting testimony and exhibits.

By Order No. 18,786, issued August 10, 1987, the commission suspended the proposed rates (Tariff No. 6) pursuant to RSA 378:6. It scheduled a prehearing conference on September 9, 1987 on the proposed permanent rates. By Order No. 18,800 (Aug. 21, 1987) the commission decided to hear the merits of the temporary rate petition at the September 9, 1987 hearing.

The commission[1(27)] approved an agreement of the parties to set temporary rates at permanent rate levels effective the date of the commission order. This order also approved the proposed procedural schedule, culminating in a December 15, 1987 hearing.

The December 15, 1987 hearing was postponed and the commission held hearings on the merits on May 16, 17, and 19, 1988. Kearsarge filed its brief on June 20, 1988.

II. *Settlement Agreements*

A. Rate Base and Expenses

[1] On December 21, 1987 the company and staff entered into a Stipulation which established levels of test year operating revenues, expenses, and rate base, and an agreement with respect to the recovery of revenue deficiency of temporary rates as compared with permanent rates finally established by the commission. Ex. 5.

The Stipulation Agreement recommends an adjusted test year Net Operating Income of $522,210. The Net Operating Income was based on a test year income statement ending May 31, 1987 and was adjusted in the following areas:

1. Local Service Revenue (Inside Wiring).

2. Interstate Toll Revenue (Removing prior period revenue adjustments recorded in the

test year, the effect of the tax rate change and the effect of the FCC reallocation of account 645.

3. Intrastate Toll Revenue (Removing the effect of the tax rate change).

4. Private Line Settlement Revenues with New England Telephone.

5. Uncollectible Revenues

6. Adjustments for known and measurable changes in maintenance, depreciation, and payroll, medical, insurance and pension expenses.

7. Change in the federal corporate income tax (Tax Reform Act of 1986).

8. Estimated rate case expense.

The Agreement computes the total rate base as $6,084,073. The parties did not agree to a rate of return and therefore could not stipulate the required revenue increase.

The Agreement also provides that the company shall recover the difference between the revenue level found by the commission and the company's existing rates that were made temporary by order no. 18,850 by means of a surcharge in accordance with RSA 378:29.

The commission finds that the December 21, 1987 Stipulation Agreement on the net operating expenses, rate base, and surcharge relating to the difference

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between temporary and permanent rates is supported by the evidence before it and in the public good, and accepts it as the resolution for this portion of the instant docket.

B. Rate Design

Subsequent to the December 21st Stipulation, the parties continued to confer with respect to rate structure matters and on May 16, 1988 reached a Stipulation Agreement on rate structure. The Agreement contains the following rate structure recommendations.

Once the final amount of revenues to be recovered is set by the Commission, the residential one-party rate will be set by the following method. First, the revenues for all services that have been individually priced, as proposed by the Company or modified by the stipulation, are subtracted out of the total authorized revenue amount. This is done by multiplying the number of service units times the stipulated price and aggregating revenues across services. Second, all services that are developed as a proportion of the residential one-party rate are entered into a formula. This formula weights the service rates by the assigned ratio and multiplies them by the number of units per each service, so as to equal the remaining amount of authorized revenues. These proportions are set according to historical patterns of revenue recovery and are further modified by value-of-service principles as noted in the stipulation. The third step of the method is to round up or down a few cents so as to not over or under recover the authorized revenue figure.

The business two-party rate will be lower than the proposed rate and will be seventy-five percent of the proposed business one-party rate. The rate is modified to reflect value-of-service principles, i.e. two-party service is perceived to be of less value than one-party service and,

therefore, should be priced somewhat lower. Comparable companies' rates for this service were also used to determine an appropriate range of prices.

The rotary business trunk rate will be lower than the proposed rate and will be one hundred ten percent of the proposed business one-party rate. The residential rotary trunk rate will be set at one hundred ten percent of the proposed residential one-party rate. As was the case for the business two-party rate, the rates for rotary business and residential trunks have been compared to rates of other similar-sized companies and modified to better reflect value-of-service principles.

Directory charges for Additional Listings will increase to $1.10 for residential customers, to $1.25 for business customers, and to $1.50 for nonpublished numbers. Foreign directory listings will rise to $1.25. Operator answering service rates will rise 25 percent. The increase in the rates of these services will bring them into line with those of comparable companies generating additional revenues to relieve the upward pressure on local exchange rates.

The key telephone system trunk rate will be one hundred twenty-five percent of the proposed business one-party rate. The PABX trunk rate will be one hundred fifty percent of the proposed business one-party rate. Each is adjusted in relation to value-of-service principles and into closer alignment with other similarly sized telephone companies' rates.

We have reviewed the formulae and specific rates agreed upon by the parties to the May 16, 1988 Stipulation Agreement. We find the rate design to be supported by the evidence and in the public good, and

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accept it as the resolution of the rate design component of this case. The company is directed to file tariff pages in accordance with the specific rates in the rate design Stipulation Agreement and the formulae applied to the revenue requirement as found below.

III. *Litigated Issues*

Both parties utilized the following test year capital structure:

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

Capital Structure
Test Year Ending May 31, 1987

	Capitalization Amount	*Capitalization Amount*
Common Stock Equity	*$3,143,592*	*52.09%*
Preferred Stock	*175,000*	*2.90*
Long-Term Debt (1)	*2,716,556*	*45.01*
Short-Term Debt	*0*	*0*
Total Capital	*$6,035,148*	*100.00%*

(1) Includes Current Maturities

They calculated the same embedded costs of debt and preferred at 7.82% and 5.36% respectively. The only contested issue was the return to be allowed on equity.

Based on the following analysis we find that the company's proposals of returns on equity of 15.91 to 16.91 percent and 13.82 percent are excessive, and will set rates based on a return on equity of 10.77 percent. Before proceeding to our analysis of the factual and methodological issues, we will set out the legal requirements for findings regarding rate of return.

A. Legal Requirements

1. *Position of the Parties*

a. Kearsarge Telephone Company

In its original petition Kearsarge argued in favor of a return on rate base of 12.27% with a return on common equity of 15.91% to 16.91%. It supported its original petition at the hearing but stated that it would be willing to accept a return on rate base of 10.88% with a return on common equity of 13.82%.

Kearsarge alleged that it based its analysis on the Discounted Cash Flow (DCF) method as tested and proved by the application of comparable earnings method and the risk premium method. It argued that this use of a number of analyses was necessary to make a decision that complied with the constitutional requirements set forth in *Federal Power Commission v. Hope Nat. Gas Co.*, 320 U.S. 591, 51 PUR NS 193, 88 L.Ed. 333, 64 S.Ct. 281 (1944) and *Bluefield Water Works & Improv. Co. v. West Virginia Pub. Serv. Commission*, 262 U.S. 679, PUR1923D 11, 67 L.Ed. 1176, 43 S.Ct. 675 (1923) and that "the commission cannot satisfy its legal responsibility by using the DCF method as the sole determinant of common equity return." Kearsarge also contended that in order to comply with the requirements of just and reasonable rates the commission must grant a rate of return that will produce a level of growth that will maintain the price to book ratio.

b. Staff

Staff used DCF analysis on a group of

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eight independent telephone companies as the primary basis for its recommended return on equity. The 10.77% result was obtained by adding an estimate of the market based dividend yield of 5.64% to a 5.13% estimate of the dividend growth rate.

Staff maintained that "a return on common equity of 10.77% adequately compensates investors for the levels of business and financial risk inherent in Kearsarge, will allow the company to maintain its existing credit worthiness" and "is consistent with the standards established by *Hope* and *Bluefield*." (Tr. II, p. 130). It states that its recommended rate of return meets the minimum required standard enunciated by *Hope* in that it will

> enable the company to operate successfully, to maintain its financial integrity, to attract capital, and to compensate [the company's] investors for the risks assumed ... even though [it] might produce only a meager return ....
>
> *Hope*, 320 U.S. at 605, 51 PUR NS at 202, 88 L.Ed. at 346.

The rate of return will not be confiscatory and will produce just and reasonable rates. The staff

maintains the petitioner is incorrect in its argument that the commission must utilize a number of analyses and studies to determine a rate that is just and reasonable under this standard. It notes that under *Hope* and *Federal Power Commission v. Natural Gas Pipeline Co.*, 315 U.S. 575, 586, 42 PUR NS 129, 86 L.Ed. 1037, 62 S.Ct. 736 (1942) the commission is not required to use any one formula or combination of formulae to determine rates.

Furthermore, the staff does not agree with Kearsarge that the regulatory standards of just and reasonable rates require the commission to grant a rate of return that will provide a level of dividend growth that will ensure a certain price to book value ratio.

2. *Commission Analysis*

[2-7] The Commission must set rates that are "just and reasonable" pursuant to RSA 378:7. The rates must be sufficient to yield at least a reasonable return on the cost of used and useful property, less accrued depreciation. RSA 378:27. The law does not preclude the commission from receiving and considering any evidence which may be pertinent and material to the determination of a just and reasonable rate of return. RSA 378:28.

The just and reasonable standard creates a zone of reasonableness between the lowest rate that is not constitutionally confiscatory and the highest rate that is not excessive and extortionate. *New England Teleph. & Teleg. Co. v. New Hampshire*, 104 N.H. 209, 44 PUR3d 498, 183 A.2d 237 (1962) (*N.E.T. v. State*). The commission must balance the interests of the investors and the consumers in determining a return that will allow the utility to maintain its credit and attract the necessary capital. *N.E.T. v. State*, 104 N.H. at 236; *Hope*, 320 U.S. at 603.

[i] For a return to not be confiscatory it must "be commensurate with returns on investments in other enterprises having corresponding risks" (*Hope*, 320 U.S. at 603; *New England Teleph. & Teleg. Co. v. New Hampshire*, 95 N.H. 353, 361, 78 PUR NS 67, 64 A.2d 9, 16 [1949]) and be "sufficient to assure confidence in the financial integrity of the enterprise, so as to maintain its credit and to attract capital." *Id.*

The New Hampshire Supreme Court

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recently found that

> The import of *Hope* is that the constitution is only concerned with the end result of a rate order; i.e., that it be just and reasonable. Under *Hope*, the particular ratemaking methodology employed by the regulatory agency is, for the most part constitutionally irrelevant. *See Power Commission v. Hope Gas Co.*, 320 U.S. at 602 (commission not bound to any single ratemaking formula). The only limitation on the methodology is that it produce neither confiscatory nor exploitative rates.

Re Public Service Co. of New Hampshire, 130 N.H. 265, 275, 92 PUR4th 546, 539 A.2d 263 (1988). Thus, commissions are entitled to "make the pragmatic adjustments which may be called for by particular circumstances." *Federal Power Commission v. Natural Gas Pipeline Co.*, 315 U.S. at 586 (1942).

The commission has the legislative discretion to determine the method to be used to

determine rates. *Los Angeles Gas & E. Corp. v. California R. Commission,* 289 U.S. 287, 304 PUR1933C 229, 77 L.Ed. 1180, 53 S.Ct. 637 (1933) and see *San Diego Land & Town Co. v. Jasper,* 189 U.S. 439 (1903). The state statutes do not provide a formula to be followed in determining a just and reasonable return. The commission may use any method so employed unless it "plainly contravenes the statutory scheme of regulation or violates our law in some respect". *N.E.T. v. State,* at 234; *Federal Power Commission v. Natural Gas Pipeline Co.,* 315 U.S. at 585.

In determining the rate of return, the cost of capital "is an important factor to be determined and considered by the commission in `the exercise of a fair and enlightened judgment, having regard to all relevant facts."' *N.E.T. v. State,* 104 N.H. at 234; quoting *Bluefield,* 262 U.S. at 692.

In *N.E.T. v. State,* 104 N.H. at 241, the Supreme Court upheld a commission decision finding N.E.T.'s rates unjust and unreasonable where the commission had relied primarily on the cost of capital approach developed by the state's expert witness Kosh. In that case Kosh had used the earnings-price ratio method (a variation of the DCF methodology) to indicate "what is currently earned on investments in other business undertakings which are attended by corresponding risks and uncertainties." *Id.* at 234.

In the following analysis, the commission determines that the staff's recommended return on common equity is just and reasonable. This finding satisfies the commission's legal responsibility for the following reasons.

In addition to meeting these standards in setting a rate of return, the commission's findings and orders must be based upon sufficient evidence to support the findings and orders. *N.E.T. v. State,* 104 N.H. at 240. In addition, these findings must be sufficiently articulated for review of our conclusions. *Id.* Kearsarge argues that the commission is required by law to use the "comparable earnings approach" of *Bluefield* and *Hope* and to legally calculate comparable earnings, one must use the earnings on book value as compared to the market price of common equity. This proposition misstates the requirements of *Hope,* and *Bluefield* and New Hampshire case law. For a rate to not be confiscatory, it must meet only the "end result" test set forth above. Neither *Hope, Bluefield* nor any of the New Hampshire cases require the commission to use any specific formula to make this determination. Thus the

commission is not required by law to use the "comparable earnings approach" advocated by the company.

B. Factual and Methodological Issues

1. Positions of the Parties

a. Kearsarge Telephone Company

[ii] The company proposed various estimates of the appropriate return to book value equity of Kearsarge arguing that "the return to common stock equity must take into consideration the recognized increased current risk of telecommunications enterprises, the increased business risk of smaller companies operating in rural areas and the increased financial risk in companies with levels of common stock in the capital structure lower than the current industry standards."

(Exhibit 12, p. 9)

It supported an authorized return on common equity of 16.50% in the direct prefiled testimony, and in its rebuttal cost of capital testimony argued for a return of 13.82% as that return on equity that would be needed to produce the revenue increase of $225,612 that had been requested in the original petition of July 17, 1987. (Exhibit 14, p. 3 and 12 and Exhibit 15, Schedule 1, p. 1 of 3). Both recommendations were based primarily on the DCF method and checked against results from comparable earnings and risk premium analyses.

A constant growth discounted cash flow analysis was conducted on a sample of nineteen publicly traded telephone companies including the eight independents used by staff, plus the seven regional Bell holding companies, AT&T, Bell Canada, Century Telephone and CP National. The ratio of prospective dividends to book value was used to measure the dividend yield (8.77%) which when added to the three to five year projected growth in per share earnings published by *Value Line* (6.71%) yielded a recommended return on equity of 15.48%.

The company rejected its DCF result obtained by dividends divided by market price because "it simply does not take into consideration investors concept of risk of these companies in comparison to other common stock equities available in the market place today as well as not recognizing book value yield as compared to market yield," and argued that the fallacy in using price to calculate yield is that one of the prime factors in the calculation is then "based on the whims of the market place." (Exhibit 12, p. 30-31). A second but similar analysis using dividend growth rather than earnings growth resulted in a return of 13.91%.

The company conducted comparable earnings analysis based on the earned returns of a large sample of borrowers from the Rural Telephone Bank. Earned returns on the book value common equity of those companies of 19.03% in 1985, 17.28% during the 1981-85 period and 15.58% in the 1976-85 period were provided to support the reasonableness of discounted cash flow results. A second comparable earnings exercise consisted of a review of commission orders in the most recent cases for Central Vermont Public Service, New England Telephone, AT&T Communications of New England, New York Telephone and Public Service Company of New Hampshire.

The company presented a risk premium analysis based on the historical returns earned on book value equity of the electric utilities comprising the Moody's electric utility average, the authorized returns for electric utilities and the historical annual yields on Moody's double-A bond index. The company asserted that the risk

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premium analysis suggests an authorized return on book value equity for Kearsarge of 15.91% to 16.91%.

Additional analyses were conducted to adjust the recommended return to recognize the added financial risk of Kearsarge's 52.09% equity ratio compared to the average of the nineteen companies' 52.87% equity ratio. (Exhibit 12, p. 38). The company maintained that in comparison with NYNEX, Kearsarge should be authorized a return of 15.57% — 15.63%. Based on a comparison with the 14.75% equity return authorized by the Vermont Commission for NET in December 1985, the company argued that Kearsarge should presently be authorized to earn in

the range of 15.32 — 15.65.

Citing studies presented and adding a one percent increment for additional business risk, the company concluded its prefiled direct cost of capital testimony with a recommended return on equity of 16.50%. The company argued that this return will fulfill "reasonable investor expectations and requirements," provide "protection to senior capital with a security rating to obtain reasonable financing costs and access to the financial markets," and permit "a low equity company to strengthen its capital structure with resulting adequate returns to equity." (Exhibit 12, p. 15).

The company argued that staff did not consider the adequacy of its recommended return by review of the times interest coverage ratio (TIER), total cost of capital and the reasonableness of results as compared to other commission decisions. It pointed out that "the staff recommended result of 10.77% will not produce the intended growth in earnings and dividends" (Exhibit 14, p. 8) and produced a numerical example to show that actual growth would fall short of the 5.13% growth rate used in staff's DCF formula if the dividend yield of 5.64% was to be satisfied. (Exhibit 14, page 7-9, Exhibit 15, Schedule 3, p. 4). It argued that the sample of nine companies used by staff actually earned 13.57% on book value equity during the 1982-1986 period and that the nine company sample would need to earn 14.28% on book value equity in order to produce the dividend yield and earnings growth rate embodied in staff's 10.77% recommended return. (Exhibit 15, Schedule 4, p. 2).

The company contended that staff's recommended return on equity of 10.77% is both less than an investor could expect to earn on less risky debt and implies a lower risk premium over current debt costs than is shown by comparison with returns authorized by other state commissions. (Exhibit 14, p. 11, Exhibit 15, Schedule 5, p. 1). Its analysis of current risk premiums indicated return on common stock in the range of 14.83% to 14.80%. (Exhibit 14, p. 12).

b. Staff

Staff used a DCF analysis on a group of eight independent telephone companies as the primary basis for its recommended return on equity. It analyzed the dividend yield and growth rate components of its recommended return separately and found them to be representative of those prevailing in the telephone industry during the past year. (Exhibit 21, p. 6, Exhibit 20, Schedule VII, p. 1, Schedule VIII, p. 1). Staff stated that the 5.13% historical growth rate was lower than *Value Line* forecasted estimates but was rather "optimistic in relation to the historical record of dividend and earnings growth." (Exhibit 21, p. 7). The 5.64% dividend yield was higher than the average dividend yield

during the preceding eleven (11) month period but was well within the range of normal monthly fluctuation during the period. (Exhibit 20, p. 24).

Staff conducted an analysis of the business and financial risks of Kearsarge and concluded that the sample group of eight companies is more risky than Kearsarge in all respects other than Kearsarge's greater exposure to potential revenue loss associated with the planned reduction in toll rates and access charges. (Exhibit 21, p. 11). Kearsarge has both a lower long term debt ratio

and a higher interest coverage ratio than do the companies in staff's DCF sample. Those measures of credit worthiness in comparison with the Standard & Poor's credit quality standards establish Kearsarge as a triple A minus to double A plus credit risk, which is one full credit rating higher than the average of the sample group. In relation to the sample group, Kearsarge earns a larger proportion of total revenues from providing regulated telephone service, enjoys more rapid growth in access lines and operates telephone plant that is more modern and technologically advanced.

Staff argues that the 10.77% return derived from the sample group is “generous” for Kearsarge since it adequately compensates investors for a higher level of risk than is inherent in Kearsarge. However, due to the difficulty in quantifying the precise effects on return requirements associated with differences in business risk, staff did not lower its recommended return as a result of its analysis of the comparative risk.

Other tests of adequacy were conducted to ensure that the recommended return was sufficient to maintain financial integrity, credit quality and satisfy capital attraction standards of *Hope* and *Bluefield.* Staff concluded that the 10.77% return provides a TIER sufficient to maintain a double-A credit quality rating (Exhibit 21, p. 24-25). It argued that the recommended return was reasonable in light of prevailing credit market conditions, and returns recently allowed other companies in New Hampshire and in other jurisdictions.

Staff contended that although the investor required return is determined in the competitive market for equity funds and cannot be affected by the decision in this case, revenue dollars needed to satisfy that required return depends on the price/book value ratio (p/bv ratio). It characterized the company's recommendation as the return on equity needed to maintain the p/bv ratio at its existing level (currently at approximately 1.60) and argued that the standards of fairness described in *Hope* or *Bluefield* do not include maintaining the market to book value of equity for any company at its existing level.

Staff argued that the company's methodologies are “faulty in several ways, to the extent that they are incapable of providing much useful information on the required equity return.” (Tr. II, p. 131). Its primary objection to the company's DCF exercise was the use of book value rather than price in the calculation of the dividend yield: “it is only by observing the relationship between these expected future cash flows (dividends and growth rate) and the dollar price that investors are willing to pay for those cash flows that any inference about the required investor return can be made.” (Tr. II, p. 131).

Staff characterized its own recommendation on the return needed to attract and maintain capital as “the investor required return” and that produced by the company as the “accounting rate of return on book value equity [needed to support] the existing price to book value ratio” and argued that the latter is significantly higher than

the former. (Tr. II, p. 133).

2. *Commission Analysis*

a. Discounted Cash Flow (DCF)

[iii] Staff's application of the DCF framework provides a recommendation of 10.77% while the company's application results in recommendations of 16.50% and 13.82%. The primary differences in the application were a) different sample groups, b) historical vs. projected growth rates and c) the dividend yield calculation.

i) Different Sample Groups

With respect to the samples used by the parties in their respective DCF applications the commission does not believe that the choice of sample is a significant cause of the differences in recommendations, and in fact, was not a contentious issue in this case. The commission notes, however, that the sample used by the company for its DCF analysis is composed of a more diverse group of companies that appear to be riskier than the sample used by staff. The commission considers both samples to be an adequate representation of Kearsarge for the purposes of this proceeding but views Kearsarge as being less risky than either. We note here that we consider the samples used by the company in its risk premium and comparable earnings analyses, including as they do electrics and the companies of Standard & Poor's 500 Index, are less appropriate.

ii) Historical vs. Projected Growth Rates

The company relies on *Value Line* earnings growth projections of 6.71% to estimate future dividend growth expected by investors while staff uses historical earnings and dividend growth of 5.13%. The commission finds the staff figure more appropriate for the following reasons.

First, the projected earnings growth used by the company captures the effect on future earnings expectations from lines of business that are unregulated as well as more risky than those of Kearsarge. Since Kearsarge has a much smaller investment and derives a significantly smaller portion of total revenues from unregulated lines of business it is unlikely that investors anticipate a pattern of earnings from Kearsarge that are as large or as volatile as that of the companies in the sample.

Second, staff shows (Exhibit 21, p. 6) that for the companies in its sample, higher growth rates for both dividends and earnings are recorded over a ten year period than over the most recent five years. Although a similar analysis for the sample used by the company is not available it seems reasonable that investors generally view the most recent historical earnings and dividend growth as more indicative of future growth. Therefore, staff's greater emphasis on the last five years of data is likely to better capture investor expectations regarding future dividend growth.

Third, while the commission has in the past utilized projected growth rates in cases where historical data is not available, it finds it more appropriate to use projections of both dividends and earnings rather than earnings alone, and forecasts produced by several investor services rather than *Value Line* alone.

iii) Dividend Yield Calculation

The 5.64% dividend yield produced by staff was obtained by dividing an estimate of the prospective dividend by the current market price in the conventional manner.

The company, on the other hand, calculates its dividend yield by dividing prospective dividends by the book value of equity rather than the current market value of equity.

After a full and careful review of the oral and written evidence, the commission finds that the conventional calculation of the dividend yield is appropriate and rejects the company's argument that the staff DCF is flawed with respect to the use of market prices for the following reasons.

First, staff's argument that estimation of the investor required return requires the use of the information contained in the market price (*i.e.*, the price that investors, after considering all elements of risk and perspective return, are willing to pay) is compelling. That information is not contained in the book value per share which suggests that the DCF model with book value substituted for the market price cannot estimate the required return or the cost of capital.

Staff's DCF methodology, particularly with respect to the use of current market price in the dividend yield calculation, is supported by economic theory, prevailing regulatory practice, past commission precedent and widespread professional opinion.

Second, capital costs are minimized when the authorized return on equity is established at that level which just matches the investor required return. The investor required rate of return is dependent on the risk aversion characteristics of investors and is determined in the market for common stock. The earned rate of return on the book value equity for any regulated company is positively related to the authorized return. If the authorized rate of return is initially set at the investor required return but the company earns a return on book value equity in excess of that investor required return, the stock price will be bid up as investors capitalize a larger cash flow at the same original investor required return. Analysts will observe two things: 1) the price to book value ratio will rise above unity and 2) the recorded accounting rate of return on the book value of equity will be higher than its former authorized level.

The issue is then what the regulatory response should be. The commission could do nothing in the expectation that the cause of the propitious earnings level above that initially authorized eventually reverses itself and measured returns on book value revert to the authorized level.

Alternatively, regulators could undertake a rate case to review, among other things, the reasonableness of the previously authorized rate of return and therefore the prices for service that were previously established. If a rate case is undertaken the authorities have a choice of where to establish the revenue requirement and by implication the authorized rate of return on book equity. If the revenue requirement is lowered to bring earnings equal to the assumed unchanged investor required return, several things will occur subsequent to the rate hearing: 1) the earnings level will fall, and as a result, the sum of dollars paid out in dividends and the dollars retained by the company will fall; 2) The stock price will fall commensurate with the decline in earnings by an amount sufficient to keep the investor required return at its initial level; and 3) The price to book value rate will move toward unity.

Finally, regulators could confuse the investor required return with the accounting return on book value (the company's recommendation) and ascribe to the former the numerical value calculated for the latter. The authorized return will be raised by the regulatory authorities in the

direction of the most recently achieved accounting rate of return on book value equity. Prices for the firm's services will be raised in order to allow the company a higher rate of return on book value equity. The analyst will observe several things subsequent to the rate hearings: 1) the dollar level of earnings will rise; 2) the measured accounting rate of return will rise; 3) the stock price will rise as investors capitalized a larger earnings steam at the assumed to be constant investor required rate of return; and 4) the price to book value ratio will deviate further from unity than was the situation prevailing before the rate review hearing.

The commission finds that the correct response is clearly to review the previously authorized rate of return and set the revenue requirement such that earnings equal the investor required return. This response is espoused not only by advocates of the conventional DCF methodology but by proponents of any of the market based methodologies.

Third, the commission is cognizant of the company's argument that the adoption of staff's recommendation will not lead to the dividend growth embodied in that recommendation while at the same time maintaining the required dividend yield. To the contrary, the rate of return recommended by staff is achievable albeit not at the price to book ratio of 1.60 currently characterizing the market for telephone company common stock. The commission, however, is not obligated to authorize a return on equity designed to maintain the existing price to book value ratio. The numerical exercise provided by the company's witness indicated only that the growth rate measured by staff cannot be satisfied while maintaining the measured dividend yield only if the stock price was maintained at a level 1.60 times the book value of equity. As noted by the company, the sample companies used in staff's DCF analysis have earned a return of 13.57% on the book value of equity during the 1982-1986 period and that earned accounting rate of return was sufficient to induce investors to bid up stock prices from 93% to 202% times book value. The level of earnings implied in the 10.77% return recommended by staff is sufficient to satisfy both the measured dividend yield and the measured growth rate at a market valuation equal to original cost rate base.

We will note here that the company in Brief (p.28) mischaracterized staff's position in this regard. (See Tr. III, p. 50).

Fourth, the articles offered by the company regarding the views of professional analysts on the DCF methodology and critiquing various methods of dividend yield calculations[2(28)] were reviewed by the commission; however, we find that none of the papers is particularly sensitive to the issues raised by the company regarding the calculation of the dividend yield.

In addition, the introduction of articles and texts, while allowed in this particular case, is no substitute for testimony of a person with knowledge and expertise that is subject to cross-examination.

The debate between Brennan and Moul[3(29)] on one hand and Hill[4(30)] on the other is primarily concerned with changes in stock prices due to influences not captured by the growth rate. To that extent, the criticism applies to the DCF applications of the company and staff equally. With respect to the use of stock price or book value in the dividend yield calculation Brennan and Moul write:

> Moreover, when stock prices diverge from book value, a DCF-derived cost rate applied to book value will almost certainly produce an inaccurate earnings

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> level for a utility. Brennan and Moul at 28.

However, the authors do not define what is meant by an "inaccurate" earnings level, and the commission suspects that the results will be termed accurate or inaccurate depending on the analyst's interpretation of the intent of regulation.[5(31)] Second, the authors advocate the use of the risk premium approach but logic suggests that if the use of market prices of securities lead to inaccurate earnings levels, then the yields implied by those market prices must lead to the same inaccuracies. As Hill points out:

> If the market price of the stock, which represents a consensus valuation opinion set through the transactions of thousands of investors everyday, is not a useful measure of the investors required return, then there is none and equity capital cost analysis falls into the realm of sheer guess work. Hill at 35.

The discussion is interesting but not at this time particularly helpful. We will continue to monitor the debate and make changes in our established and preferred cost of equity methodology as the outcome of the debate warrants.

b. Comparable Earnings

The commission finds that the comparable earnings method and the risk premium approach of the company must be considered with care when inferring from them recommendations regarding the required return of Kearsarge.

There are two distinct standards of fairness associated with the comparable earnings approach. C. Phillips, *The Regulation of Public Utilities*, 355-363 (1984). The so called "opportunity cost" standard holds that common equity investors of a regulated company should be allowed to earn a return that can be obtained elsewhere on an investment of comparable risk regardless of the relationship of that return with the cost of capital. *Id.*, at 361. Under that standard of fairness the comparable risk group must include regulated, as well as unregulated companies since investor's opportunities to invest include both. *Id.* No attempt is made to determine the cost of capital but merely to determine the returns available in other enterprises of comparable risk. *Id.*, at 361-62.

The "market determined" standard holds that the fair return is that which just allows the investor in common equity of a regulated company to earn his required rate of return which is the cost of capital of that company. *Id.*, at 355. This is the same concept as the capital attraction standard of *Bluefield* and *Hope* that requires that investors be allowed to earn their cost of capital. The market oriented cost of capital standard has gained wider acceptance over time as evidenced by the development and wide spread use of methodologies such as DCF, Capital Assets Pricing Model, Arbitrage Pricing Theory and risk premium, all of which are designed to measure the investor required return or cost of capital. *See generally: Id.*, at 355.

This commission and most others subscribe to the market oriented fair rate of return

standard. Therefore, the comparable earnings analysis advanced by the company regarding the book value returns earned by a sample of borrowers from the Rural Telephone Bank can be accepted as an estimate of the cost of capital for Kearsarge only to the extent that the observed returns approximate the market based cost of capital of the sample group. No argument or proof to that effect was advanced

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by the company. Indeed, the book rate of return based on generally accepted accounting principles will equal the true rate of return only by accident.

The commission, therefore, has considered the results of the comparable earnings approach in determining the fair rate of return on equity for Kearsarge, but with due regard for the skepticism with which such results are viewed by the community of professional rate of return analysts.

c. Risk Premium

Several risk premium analyses were conducted by the company. In the first, a risk premium of 6% -7% was added to the prevailing yield on the Moody's public utility double-A index. The risk premium was determined as the difference between the earned market returns on Moody's electric utility average and the yield on Moody's Aa rated bonds during the years 1952 — 1962. The commission views the risk premium analyses presented in the current case as unreliable in estimating the cost of capital for Kearsarge for the following reasons.

First, no reason was given for the specific period over which the risk premium was calculated except that the company witness regarded it as “the most normal period of the three decades if any period can ever be considered normal.” (Exhibit 12, p. 46). In contrast, the commission is aware that risk premiums change over time in response to tax policy, investors risk aversion, expected rates of inflation and other key economic data.

Second, the company provided no analysis of the relationship of the risk differences between electric utilities and Kearsarge Telephone Company but merely applied to Kearsarge the results derived from analysis of electric utility data.

Third, the risk premium calculated over the period was 6.09%. It is unclear how that empirical result is translated into a recommendation that “common stock equity allowances should recognize risk premium allowances of 6% to 7% over current costs of senior debt capital.” (Exhibit 12, p. 46, 1. 22-24).

Fourth, the company presented no evidence that the book value returns earned on the electric utility sample during the period were just and reasonable.

Fifth, the earned returns on book value equity of the electric utility sample during the first three years of the period were estimated by the company witness and do not reflect actual results.

The company presented a second risk premium result based on a government bond yield of 8.89% plus a risk premium from Ibbotson[6(32)] of 7.40%. The commission observes, however, that the recommendation implies that Kearsarge is as risky as the group of stocks comprising the Standard & Poor's 500 index. The commission rejects that notion based on its general knowledge

of regulated companies compared to the sample represented in the S & P index, and the beta coefficients presented in Exhibit 13.

The company also calculates a recommended return of 14.83% — 14.80% for Kearsarge based on the difference between recently authorized returns on telephone companies by other commissions and the yield on Moody's public utility bond average. However, the company calculates its premium 3.83% as an average over the seven quarter period from the first quarter of 1986 through the third quarter of 1987 whereas the premium has trended downward throughout the period with the latest being 2.08%. Furthermore, no assessment has been advanced by the company as to the comparability of risk between

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Kearsarge and the companies whose authorized returns were the basis of the calculation.

A separate risk premium analysis was conducted using the returns authorized by various commissions in past cases for companies in the region. The commission generally considers Kearsarge to be less risky both financially and operationally than the comparison companies which include Public Service Company of New Hampshire (15%) and Central Vermont Public Service Company (13%). The information contained in the exhibit [Exhibit 13, Schedule 16, pages 1-2] rather suggests that under the circumstances surrounding the authorizations in the sample, Kearsarge would be authorized a return considerably less than the company is currently requesting.

Finally, the commission notes that the company's criticism that “the staff merely filed in this case the identical testimony and exhibits which it used in the Granite State Telephone case” (T. II, p. 144) (Br. p. 21) is not merited. First, it would be surprising if staff testimonies relating to two similar companies, using the same methodology and filed at the same time were significantly different. However, in the instant case, we also note that in addition to the basically similar prefiled direct testimony, staff also filed an additional 25 pages of rebuttal testimony and 2 attached schedules dealing specifically with Kearsarge Telephone.

[8] The commission concludes based on all of the evidence before it that a return on equity of 10.77% as recommended by staff is a just and reasonable return for Kearsarge and that such a return will allow the company to maintain and support its credit, to attract capital, is commensurate with returns available to investors in other enterprises of comparable risk and will assure confidence in the financial integrity of the company. Furthermore, that return is consistent with recently authorized returns for similar companies in New Hampshire and in other jurisdictions.

The authorized return on equity is consistent with an overall return on original cost rate base of 9.29% given the capital structure for test year ended May 5, 1987.

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

	Amount	*Weight*	*Cost*	*Weighted*
			Rate	*Cost*
Common Equity	3,143,592	52.09%	10.77	5.61%
Preferred Stock	175,000	2.90%	5.36	.16
Long Term Debt	2,716,556	45.01%	7.82	3.52

6,035,148	100.0 %	9.29%

IV. *Revenue Requirement*

Based on all of the information previously stated in this Report, we find a revenue deficiency of $70,817, calculated as follows:

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

Rate Base	$6,084,073
Rate of Return	9.29%
Required Net Operating Income	$ 565,210
Pro Forma Net Operating Income	$ 522,210
Required Net Operating Increase	$ 43,000
Tax Effect (39.28%)	$ 27,817
Revenue Deficiency	$ 70,817

Our order will issue accordingly.

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ORDER

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

ORDERED, that Kearsarge Telephone Company's Tariff No. 6 — Telephone be, and hereby is, rejected; and it is

FURTHER ORDERED, that Kearsarge shall, on or before August 31, 1988 file revised tariff sheets to collect additional revenues of $70,817 in accordance with the rate design approved in the foregoing Report; and it is

FURTHER ORDERED, that the effect of this revenue change is to be applied to all bills rendered on or after September 1, 1988; and it is

FURTHER ORDERED, that Kearsarge Telephone Company shall, on or before August 31, 1988 file its surcharge tariff to recover the difference between temporary and permanent rates over a period of one year.

By order of the Public Utilities Commission of New Hampshire this twenty-sixth day of August, 1988.

FOOTNOTES

[1]Report Regarding Temporary Rates and Procedural Schedule and Second Supplemental Order No. 18,850 (Sept. 25, 1987)

[2]Whittaker and Sefton, *The Discounted Cash Flow Methodology: A Fair Return in Today s Market?* Pub. Util. Fort., July 9, 1987; Brennan and Moul, *Does the Constant Growth Discounted Cash Flow Model Portray Reality?* Pub. Util. Fort., Jan. 21, 1988 (hereinafter Brennan and Moul); Hill, *Use of the Discounted Cash Flow Model Has Not been Invalidated,* Pub. Util. Fort., Mar 31, 1988 (hereinafter Hill); Brennan, *Evaluation of Constant Growth DCF Model Defended,* Pub. Util. Fort., Apr. 28, 1988; David A. Kosh, Presented at the NARUC Annual Regulatory Studies Program, July-Aug. 1987 at Michigan State University, *The Determination of the Fair Rate of Return in Principle and Practice,* (1987).

[3]See footnote 2.

[4]See footnote 2.

[5]It is interesting to note that when Moul testified before this commission, he employed the DCF method and stated in part "DCF theory presumes that into perpetuity the cost rate of common equity capital, the investor's discount rate, is equal to the sum of the market-determined dividend yield and the expected growth rate of dividends." *Re Pennichuck Water Works, Inc.,* DR 85-02, 70 NH PUC 850, 857 (1985).

[6]Ibbotson Associates, *Stocks, Bonds, Bills and Inflation* (1986).

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NH.PUC*08/26/88*[52038]*73 NH PUC 336*Manchester Water Works

[Go to End of 52038]

73 NH PUC 336

Re Manchester Water Works

DE 88-114
Order No. 19,155

New Hampshire Public Utilities Commission

August 26, 1988

ORDER nisi authorizing extension of water utility service.

SERVICE, § 210 — Extensions — Water utility — Franchise rights.

[N.H.] A water utility was authorized to extend its mains and service into a municipality where no other water utility had franchise rights, provided that no hearing requests on the issue were received.

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 August 5, 1988, seeks authority under RSA 374:22 and 26 as amended, to further extend its mains and service in the town of Goffstown; and

WHEREAS, no other water utility has

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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 Selectman, Town of Goffstown 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 September 19, 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 September 12, 1988 and designated in an affidavit to be made on a copy of this Order and filed with this office on or before September 26, 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 Goffstown in an area herein described, and as shown on a map on file in the commission offices, effective September 26, 1988, unless a hearing is requested or the commission otherwise directs prior to that date.

Beginning at a point on the Goffstown/Bedford town line at the intersection of N.H. Route 114; thence northerly along the easterly side of N.H. Route 114 to the southern limits of the existing franchise area; thence easterly along the existing southern boundaries as granted in DE 76-31, Order No. 12,199 (61 NH PUC 71); DE 74-139, Order No. 11,516 (59 NH PUC 172); and D-E 3428, Order No. 6644;

By order of the Public Utilities Commission of New Hampshire this twenty-sixth day of August, 1988.

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73 NH PUC 337

Re Mount Crescent Water Company

DE 88-049
Order No. 19,157

New Hampshire Public Utilities Commission

August 26, 1988

ORDER authorizing a water company to discontinue service as a public utility.

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1. PUBLIC UTILITIES, § 5 — Termination of public utility status — Nonprofit consumer cooperative association — Elements.

[N.H.] A water utility was authorized to discontinue service as a public utility and to convert to a nonprofit consumer cooperative association; pursuant to statute, five or more persons, a majority of whom are residents of the state, may form a nonprofit cooperative association with or without capital stock, and the association may be incorporated on a cooperative, nonprofit basis for the purpose of, among other things, furnishing any type of services primarily for the benefit of its members who are ultimate consumers. p. 340.

2. PUBLIC UTILITIES, § 39 — What constitutes public service or public use — Restricted

service — To limited class — Exempt status.

[N.H.] A cooperative association providing water service will be exempt from pubic utility status under the following conditions: (1) the association requires patronage to be restricted to members of the cooperative; and (2) the association limits the service area to the subdivision. p. 340.

3. PUBLIC UTILITIES, § 39 — What constitutes public service or public use — Restricted service — To limited class — Unregulated cooperative association.

[N.H.] In order for a water public utility to become an unregulated cooperative association, the following conditions will be imposed: (1) a municipality will not be able to buy water service wholesale from the association and then provide retail service to other customers, because those other customers would have to become members and take service directly from the association; and (2) the association could not enter into wholesale contracts to serve nonmembers without either being regulated by the commission or receiving a statutory exemption from regulation. p. 341.

4. SERVICE, § 227 — Abandonment, discontinuance, and substitution — Public good — Definition.

[N.H.] The commission may grant a petition of a public utility to permanently discontinue service whenever the public good does not require the further continuance of the service, and the public good has been defined to mean not only the particular persons directly affected but also the needs of the public at large; that standard has been restated to say that the proposed action must be one not forbidden by law, and that it must be a thing reasonably to be permitted under all the circumstances of the case. p. 341.

APPEARANCES: Daniel J. Kalinski, Esq. of Emile Bussiere, P.A. on behalf of Mount Crescent Water Company; and Mary C.M. Hain, Esq. on behalf of the staff of the New Hampshire Public Utilities Commission.

By the COMMISSION:

REPORT

The following report concerns the petition of Mount Crescent Water Company (Mount Crescent) to discontinue service as a public utility. It sets forth the procedural history, the positions of the parties, and the commission analysis. It approves the petition.

I. *Procedural History*

On March 28, 1988, Mount Crescent (a New Hampshire Corporation doing business as a water service public utility) petitioned the New Hampshire Public Utilities Commission (commission) pursuant to, *inter alia*, RSA 374:28 to discontinue service as a public utility. On April 15, 1988, the commission issued an order of notice scheduling a prehearing conference on May 20, 1988, to determine whether the petition was in the public good.

At the prehearing conference, the parties had an off-the-record negotiation. As a result, they agreed to proceed with a hearing on the merits in lieu of a prehearing conference.

At the hearing on the merits, the commission reserved an exhibit number for the articles of incorporation of a cooperative association to be formed. This exhibit was submitted on July 22, 1988.

II. *Positions of the Parties*

Mount Crescent argued in support of its petition. The staff of.the commission (staff) raised some questions, but generally

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supported the petition.

A. Mount Crescent

Mount Crescent intends to convert Mount Crescent Water Company from a corporation into a non-profit “consumers' cooperative association” (CA) pursuant to RSA 301-A. Before forming the CA, Mount Crescent seeks commission approval to discontinue its service as a public utility. It argues that the CA would not be a public utility because it would not be providing service to the public — service would be provided to members only. It avers that, since a CA formed under

RSA 301-A provides service to members only, a CA is, by definition, exempt from the commission's jurisdiction.

B. Staff

The staff supports the petition generally, because Mount Crescent has a history of providing quality service and there is only a small amount of revenue involved. However, the staff voiced several concerns with the petition.

The staff argues that, to be unregulated, the CA must not hold itself out as offering service to the public, in other words, service must be limited to the members and membership must be limited to the Mount Crescent subdivision. It contends that, in light of the consumer protections established in this CA entity, it is not a good use of state funds to regulate. However, on the other hand, the staff is concerned that if people do not want to become members, they will not be able to get service. The staff asserts that, under RSA 301:A, in order for the municipality to be served by the CA, the municipality must be a member of the CA.

III. *Findings of Fact*

Mount Crescent was incorporated by an Act of the New Hampshire legislature in 1907. Mount Crescent was given permission to do business as a water utility in its current franchise (a portion of the Town of Randolph) in *Re Mt. Crescent Water Co.*, D-E3625, order no. 7015, 39 NH PUC 187 (July 18, 1957). The existing water supply is 4 springs which gravity feed into a reservoir and a distribution system.

Mount Crescent serves 64 residential customers (17 year round, 44 seasonal, and 3 seasonal customers who have two dwellings), and the municipality of Randolph. The service to Randolph consists of only three hydrants.

The authorized number of shares in Mount Crescent was 250. There were 246 shares outstanding. The initial capitalization was $10,000, consisting of 250 shares at $40 per share. One hundred sixty-nine of these shares were held by 47 customers. The remaining 77 shares were held by non-customers. The majority of these non-customers were close family members of customers. Eighteen of Mount Crescent's customers were not stockholders.

Mount Crescent has no employees. The current Vice President of the corporation serves as Superintendent of the water company.

Mount Crescent's board of directors voted to form the Mount Crescent Consumer Cooperative Association (the CA) (without capital stock) and to then dissolve the Mount Crescent Water Company corporation and sell its assets to the CA. Under the by-laws, membership in the CA is available to existing households within the service area, new members within this area will be accepted as long as the physical plant and water supply are adequate,

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the CA may not serve non-members, and each member (household) will have one membership vote. An annual meeting will be held every August with special meetings at the call of the board of directors or by petition of 10% of the membership. Rates will be based on a flat fee instead of a fixture count. At the discretion of the board, any cash surplus at the end of each

operating year may be returned to the members, retained as an operating reserve, or used to reduce rates for the ensuing year.

On July 2, 1988, a stockholders meeting was held. The purpose of the meeting was to consider the Board of Directors' resolution to dissolve the corporation and then to transfer the assets of the company to the newly formed CA. A total of 171 shares were represented and voted at the meeting. The stockholders voted 171 to 0 in favor of the resolution.

At the hearing, the commission ruled from the bench that the CA should hold an organizational meeting so that it could determine if all customers would voluntarily join. The CA held its first organizational meeting on July 2, 1988. They elected a board of directors, who will run the business and set rates. They set the membership fee at $200. Fifty members had joined the CA as of July 22, 1988 including the town of Randolph. The CA expects that all customers will join.

The service area is described as:

> Beginning at a point on Randolph Hill Road 0.4 miles north of its junction with U.S. Route 2 and running due north a distance of 0.5 miles, thence westerly a distance of 1.45 miles, thence southerly a distance of 0.6 miles, thence returning to the point of beginning.

This area differs slightly from the Mount Crescent service territory. It reduces the westerly course by .15 of a mile and increases the southerly course by .1 of a mile. Thus the area includes two potential building lots and excludes areas where there are no homes or no potential developable lots. There are 8 to 10 additional undeveloped lots that may be subdivided that would be included in the service area.

IV. *Commission Analysis*

[1] Based on the following analysis, we find that the petition is supported by the evidence and in the public good. Therefore, we shall order Mount Crescent Water Company to discontinue service as a public utility.

Under RSA 301-A:2,I, five or more persons, a majority of whom are residents of the state, may form a nonprofit cooperative association with or without capital stock. Under RSA 301-A:2,II, the association may be incorporated on a cooperative, nonprofit basis for the purpose of, among other things, furnishing any type of services primarily for the benefit of its members who are ultimate customers.

Membership is available on a voluntary basis to all persons who can utilize the services of the association and who are willing to accept membership responsibilities. RSA 301-A:12,I. The association may set membership criteria based upon geographical boundaries, and patronage may be restricted to the members of the cooperative. RSA 301-A:12,II.

[2] Under RSA 362:2 an association that provides water to the public is a public utility. There is no language in the statute to indicate that the entity must make a profit for the entity to be a public utility.

We would interpret this provision of the statute to exempt from public utility status

RSA 301-A cooperative associations with the following conditions.

1) The CA requires patronage to be restricted to members of the cooperative.

2) The CA limits the service area to the subdivision.

[3] Thus, the Town of Randolph will not be able to buy water service wholesale from the CA and then provide service retail to other customers. Those other customers would have to be members of the CA and take service directly from the CA. In addition, the CA could not enter into wholesale contracts to serve non-members without either being regulated by this commission or receiving an exemption from regulation under RSA 362:4. However, the municipality may be a member of the CA and buy water for fire protection, and other direct municipal uses within the subdivision.

The CA has limited its service area to the subdivision. The by-laws include a provision that requires patronage to be restricted to the members of the CA. In light of these two facts, we find that the petitioner is not a public utility and that the petition should be granted.

RSA 301-A:33 provides for the dissolution of CAs. We shall require the CA to further amend its bylaws to require it to notify the commission should it dissolve. Then, if the new entity created as a result of dissolution must be regulated, we will be able to renew our regulation.

The commission was concerned about whether Mount Crescent was planning to transfer the assets at original value or whether it would attempt to transfer the assets at an inflated value. However, the record shows that the compensation for the transfer was a nominal value.

[4] Pursuant to RSA 374:28, the commission may grant a petition of a public utility to permanently discontinue service whenever the public good does not require the further continuance of the service. The public good has been defined to not only mean the particular persons directly affected but also the needs of the public at large. *Boston & Maine R. R. v. New Hampshire*, 102 N.H. 9 (1959). The supreme court restated this standard as follows

> This is equivalent to a declaration that the proposed action must be one not forbidden by law, and that it must be a thing reasonably to be permitted under all the circumstances of the case.

Id. at 10.

The CA has represented to us that it will be operating legally under the provisions of RSA 301-A. Since the CA will be providing service in the future, the public good does not require Mount Crescent to continue providing service.

ORDER

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

ORDERED, that the Mount Crescent Water Company shall discontinue service as a public utility.

By order of the Public Utilities Commission of New Hampshire this twenty-sixth day of August, 1988.

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NH.PUC*08/30/88*[52040]*73 NH PUC 342*Granite State Telephone

[Go to End of 52040]

73 NH PUC 342

Re Granite State Telephone

DE 88-110
Order No. 19,159

New Hampshire Public Utilities Commission

August 30, 1988

ORDER authorizing revision of telephone utility's tariff.

SERVICE, § 485 — Procedure and practice — Tariff revision — Telephone.

[N.H.] A telephone utility was authorized to revise its tariff so as to (1) move extended area service rates from a supplement into the main body of the tariff, (2) exclude the application of temporary suspension of service to low-use measured service, and (3) eliminate the offering of season service.

By the COMMISSION:

ORDER

WHEREAS, on August 1, 1988, Granite State Telephone (the Company) filed with the commission revisions to its tariff NHPUC No. 6 in which it proposed to 1) move EAS rates from Supplement No. 8 into the main body of the tariff through the issuance of Supplement No. 12; 2) exclude the application of its Temporary Suspension of Service to low use measured service; and 3) eliminate its offering of Season Service; and

WHEREAS, Supplement No. 12 does not alter current EAS rates or provision thereof and clarifies the Company's tariff NHPUC No. 6; and

WHEREAS, the price for low use measured service is currently so low that few customers would be expected to request temporary suspension of service; and

WHEREAS, Season Service has rarely been applied and is administratively burdensome to administer; it is therefore

ORDERED, that Supplement No. 12, Title Page and Original Page 1 be adopted; and it is further

ORDERED, that Temporary Suspension of Service Section 3, 2nd Revised Sheet 13 be superseded by Section 3, 3rd Revised Sheet 13; and it is further

ORDERED, that Season Service, Section 3, 2nd Revised Sheet 14 be superseded by Section 3, 3rd Revised Sheet 14 thereby eliminating the offering of Season Service.

By order of the Public Utilities Commission of New Hampshire this thirtieth day of August, 1988.

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NH.PUC*08/30/88*[52041]*73 NH PUC 342*New Hampshire Electric Cooperative, Inc.

[Go to End of 52041]

73 NH PUC 342

Re New Hampshire Electric Cooperative, Inc.

DR 88-67
Supplemental Order No. 19,160

New Hampshire Public Utilities Commission

August 30, 1988

ORDER directing an electric cooperative to implement a plan for the protection of customer prepayments and deposits. For prior order establishing emergency requirements for deposits and prepayments, see 73 NH PUC 226.

SERVICE, § 188 — Customer contributions — Deposits and prepayments — Protection of customers — Financially troubled electric cooperative.

[N.H.] An electric cooperative that had fallen behind on its debt obligations was directed to implement its "letter of credit" plan

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designed to protect the prepayments and deposits of its non-residential customers; pursuant to its letter of credit plan, the cooperative negotiated an agreement for a letter of credit that would be exercised in the event of bankruptcy so that funds for the account of each customer that had made a deposit or prepayment would be held in escrow by a trustee who would turn over prepaid construction funds to the cooperative upon completion of construction work, and would return customer deposits or, where appropriate, remit the deposits to the cooperative.

APPEARANCES: Mayland H. Morse, Jr., Esq. of Hall, Morse, Gallagher and Anderson on behalf of the New Hampshire Electric Cooperative, Inc.; Mary C. M. Hain, Esq. on behalf of the staff of the New Hampshire Public Utilities Commission.

By the COMMISSION:

REPORT

This report concerns proposed plans to protect the prepayments and deposits of New Hampshire Electric Cooperative, Inc. customers. The report details the procedural history of the case and makes findings of fact and analysis. It finds that although the plan is responsive to the commission's order no. 19,094, actions subsequent to the commission's order make portions of the plan no longer necessary. Therefore, the commission approves it in part and disapproves it in part, and orders only the implementation of a letter of credit for non-residential customer deposits.

I. *Procedural History*

On May 13, 1988, the New Hampshire Public Utilities Commission (commission) ordered the New Hampshire Electric Cooperative (NHEC) to hold all deposits or prepayments in a separate account (or accounts) on behalf of the customers making these payments; or in the alternative to no longer accept any deposits or prepayments, return all such moneys currently held, and accept payments for services only in arrears. Order No. 19,094 (73 NH PUC 226). It also ordered NHEC to protect the prepayments of small power producers and cogenerators under § 210 of the Public Utilities Regulatory Policy Act, as amended, 16 U.S.C. § 824a-3 and under the New Hampshire Limited Electrical Energy Producers Act, RSA 362-A. The commission issued this order pursuant to its emergency powers under RSA 378:9 to protect the interests of customers making prepayments or deposits. It found it necessary to act to assure NHEC's commitments to serve customers. *Id.*

The commission required NHEC to file a letter stating which emergency option it would follow, and it set a hearing for July 19, 1988 to consider these options to determine a permanent change to NHEC's tariff. *Id.* On July 1, 1988, NHEC filed its prefiled testimony. The testimony indicated that NHEC had created segregated accounts.

At the hearing, the staff requested that NHEC file any existing legal analysis of alternative mechanisms that might have been discussed to carry out the intent of the commission's order and reasons why these options were not chosen and also case law and any other analysis that supports NHEC's position. The commission ordered that if any such analysis exists that it be filed or if it does not exist, that NHEC file a letter so stating. On August 2, 1988, NHEC filed a letter stating that no memos

of law had been written on this issue.

II. *Background*

The sequence of events that caused the commission's action in this case began when the New Hampshire Electric Cooperative, Inc. (NHEC) advised the Rural Electrification Administration (REA) in late December, 1987 that without further financing or interest deferment, NHEC would not be able to meet both its ongoing Seabrook project payments to the Seabrook owners and the scheduled interest payments to the Federal Financing Bank on previously advanced loans. In

response, the REA curtailed previously approved financing. On March 22, 1988, NHEC informed the commission that, as a result of the loss of this financing, it had not made its Seabrook and REA principle and interest payments since January 1, 1988.

III. *Positions of the Parties*

The company proposed the following plan to comply with the commission's order. NHEC would segregate the funds that are non-priority (residential deposits and prepayments over $900 and all commercial deposits) into a separate account. The company proposes to deposit 105 percent of this amount so that it can be assured of sufficient funds without the need to perform a daily reconciliation of the account. It intends to adjust the balance at the end of each month.

It would obtain a letter of credit from the Pemmigewassett National Bank. The letter of credit would be issued by the Pemmigewassett National Bank to the Indian Head National Bank as an escrow trustee.

Indian Head would exercise the letter of credit 90 days after a voluntary or involuntary filing in bankruptcy and hold the escrow funds for the account of each depositor. In the 90 days following a filing in bankruptcy, NHEC would ask the bankruptcy court to treat all deposits and prepayments in the normal course of business. If the court would not so order then a letter of credit would be exercised by the trustee who would receive the funds.

NHEC would provide the trustee with the names of the customers for whom funds are allocated. Upon the completion of construction work on a given account, the trustee would pay NHEC the prepaid construction funds. The trustee would also be in charge of returning customer deposits or remitting them to NHEC where appropriate.

NHEC contended that it should not be required to keep segregated accounts for the amount of residential deposits under $900. It avers that the Bankruptcy Code provides enough protection for residential deposits under $900. NHEC argues that residential customers of up to $900 are entitled to special protection as priority claims under § 507(a)(6) of the Bankruptcy Code. Specifically, it stated, § 1129(a)(9) of the Bankruptcy Code requires a Chapter 11 reorganization plan to provide for payment in full of priority claims, or in the event of a liquidation under Chapter 7, § 726(a) requires that the proceeds of the liquidation, after satisfaction of liens, be applied to the payment in full of priority claims before the payment of any unsecured creditor.

NHEC argued that a segregated account would not provide adequate protection for residential customers whose deposits or prepayments were over $900 and for all commercial deposits and prepayments. Under the Bankruptcy Code, it avers, these deposits would have the status of general

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unsecured claims unless otherwise protected. It contended that with just a segregated account arrangement, NHEC would have to litigate in bankruptcy court to make the funds available. Therefore, it proposed a plan that would secure the full aggregate of such deposits with a letter of credit.

NHEC asserts that the letter of credit will offer more protection than merely a segregated account because the trustee of the letter of credit would not be required to receive the permission

of the bankruptcy court to draw funds under the letter of credit. Therefore, it argues, no legal action would be required to draw funds unless the Bankruptcy court entered an injunction against the trustee. It also argues that the letter of credit method will be the most effective method available to protect non-priority customer deposits while still leaving the funds available for the immediate use of NHEC. However, NHEC pointed out that there is possibility that under § 547 of the Bankruptcy Code the letter of credit may be set aside as a preferential transfer (a conversion of an unsecured claim into a secured claim) if a bankruptcy petition is filed within certain periods of time after the transfer.

The staff asked why residential customers with deposits and prepayments of less than $900 were not provided with the letter of credit protection. NHEC argued that tieing up these additional funds would tie up more cash flow than is necessary under the circumstances. It also argued that in the Chapter 11 reorganization of Public Service Company of New Hampshire the bankruptcy court has entered an order allowing the deposits to be honored just as though there had been no bankruptcy petition.

The company argued that any form of protection that is implemented should be implemented only on a temporary basis. It made this argument because the segregated funds tie up cash flow that would otherwise be available for other business purposes. NHEC stated that it would request the commission to withdraw this order when it becomes current on its debt obligations or when it receives commission approval for a restructured debt.

IV. *Findings of Fact*

On May 13, 1988, the REA agreed to advance funds once again and assured NHEC that these funds would be available through September. NHEC cured its default within the five month permitted interval. NHEC is negotiating with the REA and its lenders (the Federal Financing Bank and the Rural Electric Cooperative Finance Corporation) for a restructuring of its Seabrook debt obligations. The company agreed to inform the commission if there are any changes in its agreement with the REA.

As of June 30, 1988 NHEC had $86,808 in commercial deposits and $148,384 in residential deposits (all less than $900) for a total of $235,192. In terms of advance payments for construction the company holds $523,906 for commercial advance payments, $111,577 for residential prepayments of less than $900, and $160,753 for residential advance payments of more than $900 for a total of $800,236. NHEC does not presently have any contracts with small power producers.

Following the issuance of the May 13, 1988 order, the NHEC created a segregated account at the Pemigewasset National Bank entitled “NHEC Member Deposit and Prepayment Trustee Account.” It deposited an amount equal to 105 percent of the balance of prepayments and deposits over $900 as of May 31,

1988.

NHEC has negotiated an agreement with the Pemmigewassett National Bank for the letter of credit. NHEC has also negotiated an escrow trust agreement with the Indian Head National

Bank. NHEC has the right to rescind the letter of credit upon the approval of the commission.

V. *Commission Analysis*

The United States Bankruptcy Court for the District of New Hampshire has issued two orders in *Re Public Service Co. of New Hampshire*, Chapter 11 Case No.: 88-00043 that are pertinent to our determination of this case. On March 15, 1988, the court ordered Public Service Company (PSNH)

> to refund or credit pre-petition deposits to residential customers in accordance with NHPUC Rule 303.04, to the extent that an individual customer's deposit balance existing prior to January 28, 1988, including accrued interest, does not exceed 1900, at the time such deposits may become subject to refund or credit in the normal course of business . . . .

On August 17, 1988, the Bankruptcy Court issued an order requiring PSNH to return in the normal course of business the deposits of residential customers in excess of $900. It required PSNH to perform all line extension work, underground service work, interconnection studies and work for small power producers who made pre-petition prepayments for such work. It required PSNH to return additional prepayments made by these customers to the extent that they exceed the cost to PSNH of performing the work. It granted credits against electric service to those customers whose service was interrupted, either under a winter interruptible rate or under a special contract for interruptible service. The only issue that the court did not address was nonresidential deposits.

We find that the proposed letter of credit plan and the segregated accounts are necessary for the following: 1) residential deposits; 2) customer prepayments for line extension work, underground service work and small power producers work and 3) interruptible service credits.

Since the bankruptcy court has not, to date, allowed nonresidential deposits to be returned in the normal course of business, the commission finds that the proposed letter of credit plan is supported by the evidence is necessary, and reasonable. The plan addresses the intent of the original commission order, to wit, to ensure that deposits are treated as the property of the provider of these funds.

We are pleased that the company has created a method that will carefully safeguard these funds. Due to the expense involved in administering the letter of credit, we do not find it appropriate to require implementation of this procedure over the long term.

In consideration of the above, we require implementation of the letter of credit portion of the plan for nonresidential deposits only. We order NHEC to file a request to terminate these procedures when NHEC becomes current on its debt obligations.

Our order will issue accordingly.

SUPPLEMENTAL ORDER

Upon consideration of the foregoing report; it is hereby

ORDERED, that New Hampshire Electric Cooperative shall implement the letter of credit portion of the plan for nonresidential deposits only; and it is

FURTHER ORDERED that NHEC shall file a request to terminate these procedures when it becomes current on its debt obligations.

By order of the Public Utilities Commission of New Hampshire this thirtieth day of August, 1988.

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NH.PUC*08/30/88*[52042]*73 NH PUC 347*Dover Water Works

[Go to End of 52042]

73 NH PUC 347

Re Dover Water Works

DE 88-002
Order No. 19,161

New Hampshire Public Utilities Commission

August 30, 1988

ORDER authorizing implementation of water investment fee in franchised areas outside of a municipality.

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1. RATES, § 304 — Installation and connection charges — Municipal water utility — Water investment fee — Factors considered.

[N.H.] Because the commission may only approve rates and charges that are found to be just, reasonable and lawful, when evaluating the petition of a municipal water utility to implement a $500 water investment fee for all new taps made in franchised areas outside of a municipality, the commission must consider: (1) whether the utility has demonstrated that the proposed fees are calculated correctly based on costs; (2) whether collection of the fee in advance of construction is permissible; and (3) whether the rate structure equitably recovers the revenues from the affected class of users. p. 348.

2. RATES, § 304 — Installation and connection charges — Water investment fee — Cost of service — Price changes and trends.

[N.H.] When determining whether a municipal water utility desiring to implement a water investment fee has demonstrated that the proposed fee was calculated correctly based on costs, the commission accepted an analysis of the per customer equity of the current fixed assets, because even though the calculation did not explicitly demonstrate that the fee was cost based, it demonstrated that in a period of continual inflation and cost escalation that it was likely that the future per customer asset value would be higher than the present amount. p. 349.

3. VALUATION, § 251 — Property not paid for — Customer advances — Water investment fee — Municipal systems.

[N.H.] A municipal water utility was allowed to collect a water investment fee in advance of construction because municipal corporations furnishing water outside their municipal boundaries are exempted from accounting functions of public utilities, and because rates for publicly owned water utilities are typically determined on a cash basis rather than on the rate of return method used for regulated utilities; municipal systems are not profit-making institutions and therefore investment of equity capital with the expectation of a return on that capital is not involved in their operations, so all construction must be financed by debt or by collection of fees and charges from the affected class of users. p. 349.

4. RATES, § 429 — Municipal utility — Water — Extraterritorial service — Water investment fee.

[N.H.] Application of a municipal water utility's water investment fee to users in franchised areas outside the municipality was found to maintain equity for similarly situated customers within the municipality because the funds will only be applied to new supply and treatment facilities to serve new customers and will not be used for operation, maintenance or replacement of existing facilities; furthermore, the fee is similar to the main extension fee that is applied uniformly both within and outside the municipality, and the primary difference between the fees is that new supply and

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treatment facilities are needed for each new customer but main extensions are only required in areas not yet serviced by existing mains. p. 349.

APPEARANCES: Pierre R. Bouchard, Director of Public Works, representing Dover Water Works; Martin C. Rothfelder, Esq. General Council, appearing on behalf of the commission and the commission staff.

By The COMMISSION:

REPORT

I. *Procedural History*

On December 23, 1987 the City of Dover Water Department filed a petition to implement a $500 Water Investment Fee and to extend their franchise area on Oak St. in Rollinsford. The franchise extension has been addressed in another Docket and Docket 88-002 will consider only the Water Investment Fee.

An Order of Notice was issued setting a prehearing conference for February 25, 1988 and an affidavit of publication in Fosters Daily Democrat on February 8, 1988 was subsequently received. At the prehearing conference a procedural schedule was established and a hearing was scheduled for February 25, 1988.

The only parties present at the hearing were Dover Water Department and the commission staff. No intervenors appeared.

Data requests were submitted by staff and timely responses were provided by the petitioner.

The hearing was held on February 25, 1988 with Chairman Vincent J. Iacopino presiding. Testimony was provided by Pierre R. Bouchard for the Dover Water Department.

II. *Petition of Dover Water Works*

In October, 1986 the City of Dover instituted a $500 Water Investment Fee which is applied to all new taps made within the city. The subject petition seeks authorization of the Public Utilities Commission to apply the same fee to new taps made in the franchised areas outside the city. In exhibit #1 the petitioner provided a calculation illustrating that the $500 fee is approximately equivalent to the per user equity of current fixed assets of the Water Department.

Pierre Bouchard, witness for the petitioner testified that the Water Investment Fee was necessitated by growth in the system. Five years ago the system was able to provide adequate service to their users but continued growth has required them to begin a program of expansion of their water supply and treatment facilities. He testified (transcript Pp 40-41) that the funds accumulated from this fund will only be used for capital expenditures to expand the system but no specific plan was provided. During the hearing, Attorney Rothfelder, requested an exhibit relating future growth and the expansion plan (Tr p 54). This exhibit has not yet been filed.

III. *Commission Analysis*

[1] Under RSA 378:5 and 378:7 the commission may only approve rates and charges which are found to be just, reasonable and lawful. In evaluating the petition of Dover Water Works the commission must consider: (1) whether the Petitioner has demonstrated that the proposed fees are calculated correctly based on costs (2) whether collection of the fee in advance of

construction is permissible and (3) whether the rate structure equitably recovers the revenues from the affected class of users.

[2] With regard to the amount of the proposed fee, the petitioner has provided an analysis of the per customer equity of the current fixed assets. While this does not explicitly demonstrate that the fee is cost based, in a period of continual inflation and cost escalation it is likely that the future per customer asset value will be higher than the present amount. Therefore it is reasonable to apply the calculation given in exhibit I with the condition that an acceptable response is provided to Attorney Rothfelder's request for a further exhibit.

[3] With regard to collection of a fee in advance of construction, RSA 362:4 has exempted municipal corporations furnishing water outside their municipal boundaries from accounting functions of Public Utilities. Furthermore, rates for publicly owned water utilities are typically determined on a cash basis rather than the rate of return method used for regulated utilities. The American Water Works Association publication no. M1 titled “Water Rates” states on page 3:

> The revenue requirements of publicly owned water utilities generally are not premised on rate base and rate of return,...

The commission has recognized the unique financial characteristics of municipal water departments in previous decisions (e.g. Order 18,628 in Docket 86-80, Manchester Water Works Source Development Charge). As a result of this recognition we have allowed Manchester Water

Works to begin collecting the SDC before actual construction of facilities. The essence of this decision was that municipal systems are not profit making institutions and therefore investment of equity capital with the expectation of a return on that capital is not involved in their operations. All construction must be financed by debt or by collection of fees and charges from the affected class of users. We find the petition of Dover Water Works similar to the previous case and therefore will apply the same reasoning to our decision.

[4] With regard to the equity of how revenues will be collected, we take note of the fact that the fee is currently being collected from all new users within the City of Dover. Witness Bouchard clearly stated that the funds will only be applied to new supply and treatment facilities to serve new customers and will not be used for operation, maintenance or replacement of existing facilities. Furthermore, the fee is similar to the main extension fee which is now applied uniformly both within and outside the city. The primary difference between these fees is that new supply and treatment facilities are needed for each new customer but main extensions are only required in areas not yet serviced by existing mains. We therefore find that application of the Water Investment Fee to users in franchised areas outside the city maintains equity among customers who are similarly situated.

On the basis of our analysis we conclude that the proposed Water Investment Fee is just, reasonable and lawful and approve the petition.

Our order will issue accordingly.

ORDER

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

ORDERED, that the petition of Dover Water Works to implement a $500 Water

Investment Fee for each new water connection in the franchised area is approved; and it is

FURTHER ORDERED, that within 30 days of the effective date of this order the petitioner shall provide a response to the request for an exhibit which relates future growth of the system to the capital expansion plan; and it is

FURTHER ORDERED, that the petitioner submit revised tariff pages which incorporate the new fee; and it is

FURTHER ORDERED, that this docket remain open until the required documents are submitted and accepted.

By order of the Public Utilities Commission of New Hampshire this thirtieth day of August, 1988.

Commissioner Linda G. Bisson did not participate in this decision.

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NH.PUC*09/01/88*[52043]*73 NH PUC 350*Fuel Adjustment Clause

[Go to End of 52043]

73 NH PUC 350

Re Fuel Adjustment Clause

Applicant: New Hampshire Electric Cooperative, Inc.

DR 88-119
Order No. 19,162

New Hampshire Public Utilities Commission

September 1, 1988

ORDER authorizing an electric cooperative to reduce its fuel adjustment clause rate and approving a refund of overcollections.

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1. AUTOMATIC ADJUSTMENT CLAUSES, § 52 — Fuel adjustment clause rate — Rate adjustment — Estimates and forecasts — Electric cooperative.

[N.H.] An electric cooperative was authorized to revise its fuel adjustment clause rates to reflect actual and forecasted reductions in the fuel charges assessed to it by its wholesale suppliers. p. 350.

2. AUTOMATIC ADJUSTMENT CLAUSES, § 57 — Fuel adjustment clause — Overcollections — Refunds — Interest — Rate credit.

[N.H.] An electric cooperative was authorized to refund fuel adjustment clause overcollections, including interest at 9% annual percentage rate, through a rate credit to be included as a separate line item on monthly bills. p. 351.

By the COMMISSION:

ORDER

WHEREAS, on August 18, 1988, the New Hampshire Electric Cooperative, Inc., (Co-op) filed revised tariff pages designed to reflect a reduction in the fuel charge, which is folded into base rates, from $0.02021 per KWH to $0.01475 per KWH, a reduction of $0.00546 per KWH, to be effective over a fourteen (14) month period starting on or after September 1, 1988 through October 31, 1989; and

[1] WHEREAS, the Co-op states that the reduction is justified based on the general fuel cost levels presently being experienced; and

WHEREAS, the Co-op has estimated their costs of Kilowatt-Hour requirements and fuel charges by suppliers on (1) Co-op actual use November 1987 thru June 1988 and (2) estimated need from July 1988 thru October 1989 based on projections of Public Service Company of New Hampshire, the major supplier to the Co-op, and on the average of the existing rates of the remaining smaller wholesale suppliers; and

WHEREAS, the Co-op estimates the over-recovered fuel charges as at August 31, 1988 will amount to $1,320,937; and

WHEREAS, the Co-op has requested a fuel charge reduction to $0.01475 based on projected requirements from September 1988 to October 1989 which were estimated on actual costs experienced by the Co-op from November 1987 to June 1988 with the understanding that they may, if necessary, request New Hampshire Public Utility Commission adjustment if warranted by major differences between the estimated and actual fuel charges and fuel charge rate; and

[2] WHEREAS, by the same filing the Co-op informed this commission that its total overcollection of its fuel costs as of June 30, 1988 was $844,192; and

WHEREAS, by the same filing the Co-op transmitted 3rd Revised Page 18A of its tariff NHPUC No. 13 - Electricity "Fuel Charge Over-Recovery Credit — Refunds Applicable to Months of September 1988 through May 1989", canceling 2nd Revised Page 18A, proposing to refund the amount of $1,367,450 (including estimated over collections plus interest at 9% APR for the months of July, August and September 1988) by a credit of $0.00296 per KWH during the months of September 1988 thru May 1989; and

WHEREAS, the credit will be shown as a separate line item on its bill; and

WHEREAS, the Co-op has requested waivers of the rate filing requirements (NHPUC Rules 1601.05 (a) and 1603.03) and issue authorization to allow the proposed revisions on September 1, 1988; and

WHEREAS, upon review of the material filed, the commission finds the request revision to be in the public good; it is

ORDERED, that the New Hampshire Electric Cooperative, Inc., be, and hereby is, permitted to reduce the amount of the fuel adjustment clause, which is folded into rate base, from $0.02021 per KWH to $0.01475 per KWH as reflected in its tariff NHPUC No. 13 — Electricity, 5th Revised Pages 19, 20, 23, 26, 27, 27A, 28, 30 and 33, superseding 4th Revised Pages of the same number effective for all bills issued on or after September 1, 1988 thru October 31, 1989; and it is

FURTHER ORDERED, that 3rd Revised Page 18A of its tariff NHPUC No. 13 — Electricity, be and hereby is, approved effective for all bills issued on or after September 1, 1988 thru May 31, 1989; and it is

FURTHER ORDERED, that the refund be shown as a separate line item on Co-op bills; and it is

FURTHER ORDERED that the Co-op provide this commission with detailed reconciliation of the FAC amounts over/under collected and the amounts refunded within 30 days of the close of each month; and it is

FURTHER ORDERED, that on or about May 31, 1989, the Co-op shall file a reconciliation of the amounts over/under collected versus the amount refunded at which time the commission will determine whether any additional adjustment is necessary; and it is

FURTHER ORDERED, the rate filing requirements (NHPUC Rules 1601.05(A) and 1603.03) are hereby waived so as to allow the rates to go into effect September 1, 1988; and it is

FURTHER ORDERED, that the Co-op will adhere to the annual date of November 30th in the future when FAC adjustments are requested, filing the request 30 days prior to the effective date, unless substantial differences warrant earlier revisions.

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

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September, 1988.

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NH.PUC*09/08/88*[52044]*73 NH PUC 352*Southern New Hampshire Water Company, Inc.

[Go to End of 52044]

73 NH PUC 352

Re Southern New Hampshire Water Company, Inc.

DE 88-077, DE 88-078
Order No. 19,168

New Hampshire Public Utilities Commission

September 8, 1988

PETITIONS by a water utility for expansion of existing facilities; granted.

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1. SERVICE, § 210 — Extensions — Water — Public good — Standard of fitness — Criteria.

[N.H.] For purposes of a petition by a water utility for authority to expand its service territory, the criteria used by the commission to determine the public good were the need for service and the ability of the applicant to provide service; the standard of fitness in fulfilling the public interest included such criteria as financial backing, management and administrative expertise, technical resources, and the general fitness of the applicant. p. 356.

2. SERVICE, § 210 — Extensions — Water — Grounds for approval.

[N.H.] A water utility was permitted to expand its service territory where the record showed a need for service, and demonstrated that the utility was financially and technically able to provide service. p. 356.

3. VALUATION, § 170 — Miscellaneous charges to capital — Additions and betterments — Reporting requirements — Water utility.

[N.H.] In a proceeding to consider a petition by a water utility for expansion of existing

facilities, the utility was directed to comply with capital expenditure reporting requirements or suffer rate base exclusion of unreported amounts. p. 356.

4. RATES, § 120 — Reasonableness — Standard for determining sufficiency of rates.

[N.H.] The commission determines temporary and permanent rates based on the standard that rates must be sufficient to yield not less than a reasonable return on the cost of utility property that is used and useful in the public service less accrued depreciation; the commission must also set rates that will allow a utility to earn a just and reasonable rate of return on a just and reasonable rate base. p. 357.

5. RATES, § 243 — Schedules, formalities and procedure relating thereto — Publication and notice — When effective.

[N.H.] A public utility may not change rates filed with the commission except after 30 days notice to the commission and notice to the public as directed by the commission; a tariff change will become effective only (1) after 30 days notice to the commission and notice to the public as directed by the commission, or (2) at any time upon order of the commission. p. 357.

6. RATES, § 82 — Jurisdiction, powers, and duties of state commissions — As to schedules and rate structures — Initiation or substitution of rates.

[N.H.] The commission has the authority to grant rate increases that are not formally requested, and may authorize a public utility to alter or amend any existing rate whenever an emergency exists. p. 358.

7. RATES, § 595 — Water — Expansion of existing facilities — Rates for new customers — Cost of providing service.

[N.H.] The commission rejected rates as proposed by a water utility that was authorized to expand its existing facilities, because the rates

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did not reflect the costs of providing service; instead, the commission directed that customers connecting to a new water main should be billed at the existing rates for the system supplying their particular territory. p. 358.

8. RATES, § 621 — Public fire protection — Methods of charging — Hydrant and inch-foot charges.

[N.H.] Under the commission's normal rate-making methodology, municipal fire protection is billed to a municipality through the mechanism of a hydrant charge and an inch-foot charge; therefore, in granting a water utility authority to expand its existing facilities, the commission directed that fire protection service for a municipality must be based on a current approved tariff, which included a hydrant charge and an inch-foot charge, unless an alternative method was approved later. p. 358.

9. RATES, § 304 — Installation and connection charges — New connections — Tie-on fees — Water utility.

[N.H.] A water utility was permitted to apply a tie-on fee, based on actual costs, to all new

connections for meter sizes from five-eighths inches to two inches, so that newly connecting customers would bear some cost responsibility for recent new main extensions; tie-on fees were not allowed for meters over two inches, on the basis that circumstances surrounding such meter sizes were so unique as to merit individual commission review of such applications. p. 358.

10. DISCRIMINATION, § 32 — Rates — Between localities — Reasonable or due basis — Service extension — Tie-on fee — Water utility.

[N.H.] Exemption of a municipality from a tie-on fee, designed to require newly connecting customers of a water utility to bear some cost responsibility for recent main extensions, was inappropriate, because the proposed discrimination in favor of the locality was not supported by a reasonable or due basis, especially because the uncontributed cost of the extension would ultimately be included in rate base. p. 359.

APPEARANCES: Dom S. D'Ambruoso, Esq. of Ransmeier & Spellman on behalf of Southern New Hampshire Water Company, Inc.; Robert Upton, II, Esq. of Upton, Sanders and Smith on behalf of the Town of Pelham; and Mary C.M. Hain, Esq. on behalf of the staff of the New Hampshire Public Utilities Commission.

By the COMMISSION:

REPORT

The following report concerns the hearing on the merits in the captioned proceeding. It sets forth the procedural history, and the positions of the parties. It approves the original petitions, and sets the rates to be charged for service.

I. *Procedural History*

A. Pleadings

On May 20, 1988, Southern New Hampshire Water Company, Inc. (Southern) filed a petition to expand its Gage Hill franchise territory in the Town of Pelham (as depicted in exhibit A of the petition) (hereinafter the Gage Hill expansion territory). The commission opened docket no. DE 88-77 to investigate this petition.

On May 20, 1988, Southern New Hampshire Water Company, Inc. (Southern) filed a petition to expand existing franchises in Williamsburg and Stonegate within the Town of Pelham (as depicted in exhibit A of the petition) (hereinafter the Williamsburg and Stonegate expansion

territory). The commission opened docket no. DE 88-78 to investigate this petition.

On June 14, 1988, the office of the Town Manager of Pelham, New Hampshire filed a letter stating its intent to analyze the town's water needs as well as the economic alternatives available to meet those needs. It requested that the hearing on the petitions be continued for nine months to allow this analysis.

On June 20, 1988, Southern filed a perimeter description of the Gage Hill expansion

territory. In its cover letter, it urged the commission to approve the petition by an order NISI. On July 29, 1988, the Town of Pelham filed a motion to intervene.

B. Prehearing Conference

On June 27, 1988, the New Hampshire Public Utilities Commission issued an order of notice scheduling a prehearing conference on August 3, 1988 concerning both petitions. The following events took place at the prehearing conference.

The commission consolidated these two dockets from the bench. The commission allowed the intervention of the Town of Pelham from the bench. The Town of Pelham withdrew its request for a nine month delay.

The staff recommended that Southern amend the perimeter description of the proposed Stonegate and Williamsburg expansion territory. The westernmost boundary of the area was originally proposed to be contiguous with a contour line on a USGS map. The staff stated that such contour lines are hard to locate in the field. On August 5, 1988, Southern filed an amended petition with a revised Attachment A. The amended petition requested a territory with a westernmost and southernmost boundary consisting of roadways and the town line.

The parties presented a proposed procedural agreement. By its report on prehearing conference and order no. 19,144 (August 12, 1988), the commission approved the procedural agreement. It set a hearing on the merits on August 12, 1988.

C. Hearing on the Merits

At the hearing, the Town of Pelham requested the opportunity to file a brief. The commission ruled from the bench that the Town could have one week from the hearing to file a brief. Pelham advised the commission by phone on September 6, 1988 that it would not be filing a brief.

Southern was asked to file written responses to certain questions about the franchise. These responses were filed on August 18, 1988. At the hearing, Southern amended its petition to include requests for tie-on fees chargeable for the connection of new customers and for rates for service.

II. *Positions of the Parties*

Southern supported its original petitions. It also argued that, to insure rate uniformity, the commission should approve the same rates for new customers in the Williamsburg and Stonegate expansion territory as that rate presently charged in the Hudson core. Southern asserted that fire protection service supplied to the Town of Pelham should be billed directly to the town or that the cost of this service should be incorporated into the general service rate structure as is done in the Litchfield system.

Southern contended that the tie-on fees are supported by the cost calculations it used to support its Londonderry tie-on fees. It argued in favor of a 33% increase in the tie-on fee after December 31, 1988 as an incentive to encourage people to connect to the transmission main as soon as it is constructed. It averred that municipal connections should be exempt from the tie-on fee.

Southern contended that, due to the emergency situation (detailed in the findings of fact), the commission should approve the proposed tie-on

fee and rate although Southern has not formally petitioned for or given the usual public notice of the fee or the rate.

III. *Findings of Fact*

Southern presently serves three territories in the Town of Pelham: Williamsburg, Stonegate, and Gage Hill. It serves sixty customers in Williamsburg. Williamsburg has a well of good quality and quantity. In addition, Southern has purchased a piece of property east of the Williamsburg franchise 70 feet from the present well site for the development of a well.

At the time Southern purchased the system from Policy Water Company, Stonegate had five wells, only one of which was in use. This well delivered water high in iron and manganese. There were no-storage facilities and the facilities that did exist were providing less than adequate service.

Southern drilled a bedrock well in early 1987. This well has a high level of radon. Because there is not enough room on the land to place a radon aeration device, Southern has shut down the well. Southern studied the large aquifer directly east of Stonegate, but found it to have unacceptable levels of iron and manganese.

Southern presently provides water to Stonegate using a 20,000 gallon above-ground storage tank. Southern delivers water to the tank one to three times daily using a truck purchased for this purpose. This system will freeze in freezing temperatures. Therefore, an alternative supply system is required before the winter.

We find from the evidence presented that quality water to serve the Stonegate franchise is located in Williamsburg near or inside Muldoon Park. To serve Stonegate from Williamsburg, Southern must construct a 12,600 feet ductile iron transmission main primarily down Old Nashua Road to the Stonegate subdivision. To complete this extension by December 1, 1988, Southern must begin construction before September 15, 1988. We find that the best potential source for Gage Hill is a site located one mile from Gage Hill. Southern has received requests for service from many residents of Pelham, including the developers of a major industrial park in North Pelham. The proposed service territory will enable Southern not only to remedy the emergency situation at Stonegate but also to serve the industrial park, residential customers, and municipal buildings in the next franchise area.

Southern has extended its water main approximately six feet into the Town of Pelham and is ready to serve the industrial park. Southern will further extend a twelve inch water main southerly on Mammoth Road to the Williamsburg franchise and then southeasterly along Nashua Road to Windham Road and then southerly along Windham Road to the Stonegate franchise. This extension will serve as an additional long range supply for Stonegate, Williamsburg, and for residences and businesses along Mammoth, Nashua and Windham Roads.

Southern has received authorization from its parent corporation for the proposed expenditures for additions, extensions, and capital improvements.

Southern's parent corporation has agreed to make an equity infusion to facilitate this project. Southern has satisfied requirements of the Water Supply and Pollution Control Division and the Water Resources Division of the Department of Environmental Services concerning suitability and availability of water.

Southern proposes to charge the same rates for new customers in the Williamsburg and Stonegate expansion territory as that rate presently charged in the Hudson core. Currently, Williamsburg's rates are higher than the Hudson core rate. Stonegate's rates are lower than the Hudson core rate.

Southern proposes the following tie-on fees:

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

Meter Size	*Special Tie-On Fee*
5/8″	*$ 1,500.00*
3/4″	*$ 2,300.00*
1″	*$ 4,000.00*
1-1/2″	*$ 7,900.00*
2″	*$ 12,600.00*
3″	*$23,600.00*
4″	*$ 39,400.00*
6″	*$78,800.00*
8″	*$185,850.00*

Southern proposed to increase these tie-on fees by 33% for all connections after December 31, 1988.

IV. *Commission Analysis*

A. Service Territory Expansion

[1-2] We find that the original petitions are 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 at 5, 70 NH PUC 563, 566 (June 27, 1985), we stated our criteria for determining the public good as: 1) the need for service, and 2) the ability of the applicant to provide 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 the applicant.

Re International Generation and Transmission Co., Inc., DSF 82-30, Order No. 15,755 at___, 67 NH PUC 478, 484 (July 9, 1982).

The record shows a need for the service. The record also demonstrates that Southern is financially, and technically able to provide service.

RSA 374:22, III provides that no water company shall obtain commission approval to

operate as a public utility without first satisfying any requirements of the Water Supply and Pollution Control Commission and the Water Resources Board concerning the suitability and availability of water. The evidence shows that Southern has fulfilled these requirements.

B. Reporting of Capital Expenditures

We find that Southern has not been complying with capital expenditure reporting requirements. This report and order requires them to conform with these requirements or to suffer rate base exclusion of unreported amounts.

[3] Pursuant to RSA 374:4 the commission has the power and the duty to keep informed of the capitalization, franchises, and management and operation of the property of each utility. Pursuant to RSA 374:5, utilities must, before making any

Page 356

addition, extension, or capital improvement, report the probable cost to the commission whenever the probable cost exceeds an amount to be set by the commission. The commission has the authority to classify utilities according to the amount of their fixed capital accounts and prescribe a limitation for each classification. *Id.* Under the limitations established in *Re Public Utilities,* docket DE 3138, second supplemental order no. 10,871 (February 14, 1973), (55 NH PUC 14), Southern must report the probable cost of any addition, extension or capital improvement in excess of $30,000. In order no. 10,871, we specified that these reports shall be made no less than 30 days before starting construction. In addition, N.H. Admin. Code Puc 609.07 specifies that the E-22 form shall be used to file this information and that the E-22 shall be filed quarterly.

Southern did not file a commission form E-22 — because it argued that it had already informed the commission of its construction and capital expenditure plans in a financing docket. It further alleged that although the E-22 form was not used, that all the necessary data concerning each project was submitted. The company further alleges that it does not have to file E-22s for these projects since they are each under the minimum level established pursuant to RSA 374:5.

The record shows that the company installed a new storage tank in Hudson and two new wells in Litchfield that it had not reported prior to expenditure of funds. In addition, the capital costs for the Pelham and Stonegate projects, some of which were started in January 1988, were not reported until August 9, 1988. The Pelham and Stonegate projects cost approximately $1,482,600. This figure does not even include the tank in Hudson and the two wells in Litchfield since information on these projects was not provided.

It has been commission policy to investigate any proposed expenditure when it is deemed necessary, and to make additional inquiry to satisfy itself that the need and cost are reasonable. Southern's filing of a 12 month annual budget does not satisfy the commission's need to have a project description and proposed cost in the period when construction is set to begin. Current cost projections are needed because they are more accurate.

The commission may exclude the cost of any such addition, extension or capital improvement from the rate base where the E-22 is not filed in advance of construction. Southern

is hereby on notice that future proposed capital expenditures shall be made in accordance with the requirements of DE 3138, order no. 10871 and N.H. Admin. Code Puc 609.07 or they may be excluded from rate base.

C. Rates

We deny Southern's proposed rates for the following reasons. We will allow the tie-on fee without the automatic increase.

[4] 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 378:28.

The commission must also set rates that will allow the utility to earn a just and reasonable rate of return on a just and reasonable rate base. RSA 378:28.

[5] Under RSA 378:5, the commission

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may investigate the reasonableness of any new rate. RSA 378:3 provides that public utilities shall not change rates filed with the commission "except after 30 days notice to the commission and such notice to the public as the commission shall direct. Under N.H. Admin. Code Puc 1601.05 (a) tariff changes shall become effective only

> (1) after 30-days notice to the commission and notice to the public as directed by the commission, or
>
> (2) at any time upon order of the commission.

In addition, N.H. Admin. Code Puc 1601.05 (j) requires tariff changes to be publicly noticed unless otherwise directed by the commission.

[6] In *Legislative Utility Consumers' Council v. Public Service Co. of New Hampshire,* 119 N.H. 332, 31 PUR4th 333, 402 A.2d 626 (1979) the Supreme Court determined that the commission has the authority to grant increases that were not formally requested. Pursuant to RSA 378:9, the commission may authorize a public utility to alter or amend any existing rate whenever an emergency exists.

[7] We deny the rates as proposed because they do not reflect the costs of providing service. Instead, customers connecting to the water main constructed between the Williamsburg and the Stonegate systems, will pay Stonegate rates until Southern connects this system to the Hudson core. Those customers in North Pelham who will be initially supplied from the Hudson system shall be billed at Hudson rates.

[8] Under the commission's normal rate making methodology, municipal fire protection service is billed to the municipality through the mechanism of a hydrant charge and an inch-foot charge. An exception was allowed when constructing the water system in Litchfield.

Southern included the capability for fire protection in its construction of the Litchfield water

system and in fact was required to by the town. Upon completion, Litchfield decided that it did not want the service. For cost recovery purposes, the commission allowed the inclusion of all associated costs in the rate for general service. To recognize that the town would at sometime use this service in areas outside of that supplied by general service, a required rate of $800 for each use of any hydrant is assessed against the town. This is then applied as a year-end credit to each customer on the Litchfield system. *Re Hudson Water Co.*, docket DR 80-218, second supplemental order no. 15,057 (Aug. 19, 1981) (66 NH PUC 303).

We do not believe that this is generally acceptable rate making and will not allow its use in other areas such as Pelham. Unless an alternative is later approved, fire protection for the town of Pelham shall be based on the current approved tariff for Hudson. This tariff includes a hydrant charge and an inch-foot charge.

[9] The company did not propose a specific plan for the application of the proposed tie-on fee. No method was proposed for application of the tie-on fee to the Stonegate system although it would be served by the main extension.

The use of a tie-on fee has been allowed for recent new main extensions to require newly connecting customers to bear some cost responsibility. *Re Southern New Hampshire Water Co.*, docket DR 87-171, order no. 18,883 (October 22, 1987) (72 NH PUC 511). In the instant case, it is our judgement that a tie-on fee, if based on actual costs, may be applied to all new

connections. We will allow them, as proposed, for meter sizes from 5/8" through 2", subject to the condition that Southern provide an acceptable breakdown of the cost basis for the fee within thirty days of the date of this order. We will not allow, at this time, tie-on fees for meters over 2" on the basis that the circumstances surrounding such meter sizes will be so unique as to merit individual commission review of such applications.

There is no cost evidence to support a 33% increase in the tie-on fee after 1988. Therefore, we will not allow the 33% increase.

[10] RSA 378:10 provides that no public utility shall give any undue or unreasonable preference to any locality. In this case, the proposed discrimination in favor of the Town of Pelham was not supported by a reasonable or due basis. *Id.* It is further unwarranted because the uncontributed cost of the well development and the main extension will ultimately be included in the Hudson core rate base. Therefore, we find that it is inappropriate to exempt the Town of Pelham from the tie-on fee.

We must admonish Southern for its lack of formal filing and notice of the proposed rates and fees. The Supreme Court has observed that it is not a good practice for the commission to grant a rate increase before the commission demands a formal filing. *LUCC v. Public Serv. Co.*, 119 N.H. at 353. Although we can assume that Southern knew at the time that it petitioned that it would require rates, Southern did not make the commission aware that it was requesting rates until the day of the hearing.

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's petition to expand its Gage Hill franchise territory in the Town of Pelham is approved; and it is

FURTHER ORDERED, that Southern New Hampshire Water Company's petition to expand existing franchises in Williamsburg and Stonegate within the Town of Pelham is approved; and it is

FURTHER ORDERED, that future proposed capital expenditures shall be made in accordance with the requirements of DE 3138, order no. 10,871 (55 NH PUC 14) and N.H. Admin. Code Puc 609.07 or they will be excluded from rate base; and it is

FURTHER ORDERED, that Southern New Hampshire shall submit compliance tariffs in accordance with the foregoing report for effect on the date of this order and bearing the following notation: “Authorized by NHPUC Order no. 19,168 in Docket nos. DE 87-077 and DE 87-078, dated September 8, 1988;” and it is

FURTHER ORDERED, that Southern shall provide a map of the service area at a scale of 1:24,000 or an approved alternative.

By order of the Public Utilities Commission of New Hampshire this eighth day of September, 1988.

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NH.PUC*09/09/88*[52045]*73 NH PUC 360*Concord Natural Gas Corporation

[Go to End of 52045]

73 NH PUC 360

Re Concord Natural Gas Corporation

Additional parties: Manchester Gas Company and Gas Service, Inc.

DF 88-17
Order No. 19,169

New Hampshire Public Utilities Commission

September 9, 1988

PETITION by three gas distribution utilities for approval of a merger and approval of modifications to existing long-term debt instruments in connection with the merger; granted.

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1. CONSOLIDATION, MERGER, AND SALE, § 18 — Grounds for approval and disapproval — Public good — Cost savings — Gas distribution utilities.

[N.H.] The merger of three gas distribution utilities was approved where the commission

concluded that the merger was in the public good and would result in an opportunity to save costs through the efficiencies and economies of scale of one entity rather than the current three. p. 362.

2. RETURN, § 26 — Reasonableness — Attraction of capital; maintenance of credit; cost of money — Cost of capital — Merger — Gas distribution utilities.

[N.H.] A gas distribution utility, which was the surviving company following the merger of three gas distribution utilities, agreed that for currently pending rate cases, its cost of capital would be adjusted so that a cost increase associated with the elimination of the relatively low cost preferred stock of two of the merging utilities would not be passed on to ratepayers at present; the commission directed that if the company did not agree to such an adjustment in future cases, its direct prefiled testimony in such cases should provide sufficient evidence to show the reasonableness of this additional cost of capital. p. 362.

3. RATES, § 194 — Unit for rate making — Merging utilities — Post-merger tariff.

[N.H.] In granting approval of the merger of two gas distribution utilities with and into a third gas distribution utility, the commission found that the general terms and conditions of the surviving utility's tariff, with the exception of those provisions that would have a revenue effect (rates for service, employee discounts, thermal billing, and combined service), were just and reasonable for tariffs immediately following the merger. p. 363.

APPEARANCES: Jacqueline Fitzpatrick, Esq., Richard A. Samuels, Esq. of McLane, Graf, Raulerson & Middleton, Professional Association, and by David W. Marshall, Esq. of Orr & Reno, Professional Association for Concord Natural Gas Corporation, Manchester Gas Company and Gas Service, Inc.; Martin C. Rothfelder, Esq. for the Public Utilities Commission of New Hampshire and its Staff; and Larry S. Eckhaus, Esq. for the Office of the Consumer Advocate.

By the COMMISSION:

REPORT APPROVING MERGER

I. *Introduction and Summary*

Concord Natural Gas Corporation (CNGC), Manchester Gas Company (MGC) and Gas Service, Inc. (GSI) (hereinafter collectively referred to as petitioners) filed a petition with the commission on January 29 for approval of a merger of CNGC and MGC with and into GSI and for approval of modifications to existing long-term debt instruments in connection

with the merger. This report and the order attached hereto approves that merger with the qualifications detailed herein and disposes of various issues related thereto.

II. *Procedural History*

Pursuant to an order of notice issued by this commission and published by the petitioners, the procedural hearing was held on this matter on March 17, 1988. Pursuant to a commission order entered thereafter, the petitioners submitted prefiled testimony and exhibits in support of their

petition and the parties exchanged discovery in the form of data requests and responses thereto. The commission held a hearing on this matter on July 20, 1988.

III. *Findings of Fact*

The petitioners in this case are gas utilities as defined in RSA 362:2. More specifically, each company provides retail gas service in service territories authorized by this commission within the state of New Hampshire. All of the common stock of each company is owned by EnergyNorth, Inc. (ENI) a New Hampshire corporation that operates as a holding company.

The proposed merger contemplates that CNGC and MGC will be merged with and into GSI pursuant to New Hampshire Revised Statutes Annotated Ch. 293-A, and CNGC and MGC will cease to exist as separate entities. The capital stock of CNGC and MGC will be canceled, and GSI, which will retain the same structure of authorized and outstanding shares of capital stock as before the merger, will become the sole natural gas distribution subsidiary of ENI. The debt and equity of GSI will be the combined debt and equity of CNGC, MGC and GSI. GSI will succeed to all of the rights, property, privileges, immunities, powers and franchises and will be subject to all of the duties, liabilities and obligations of each of CNGC and MGC. Additionally, GSI, the survivor of the merger, will change its name from Gas Service, Inc. to EnergyNorth Natural Gas, Inc. ("ENGI").

In connection with the merger, GSI and the holders of the long-term bonded indebtedness of each of the petitioners, will agree to modify their respective rights and obligations so that (i) the first mortgage bondholders of each company relinquish their liens on the separate assets of the companies in exchange for liens on ENGI assets of equal rank and priority and (ii) inconsistent provisions among the various bond indentures are reconciled in order to simplify ENGI's compliance with bond indenture obligations.

The proposed merger also has rate and tariff administration aspects. With regard to these matters, the petitioners propose to have the general terms and conditions of the tariff of the surviving corporation, GSI (N.H.P.U.C. No. 6 — Gas, Original Page 21 through Original Page 37) apply to all ENGI customers following the effective date of the merger.[1](33) Petitioners propose that the rate schedules of each utility and the application of tariff provisions governing employee discounted service will continue to apply to customers in each petitioner's franchise area separately until further order of this commission in connection with currently pending rate proceedings. Under this proposal, any general provisions of the GSI tariff that would have the effect of applying BTU (thermal) billing to or eliminating combined service allowances from CNGC customers will not apply to those customers until addressed in connection with the rate proceedings pending before the commission.

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Accordingly, no changes in rates or charges would occur simply as a result of the merger and a single set of general terms and conditions would replace the three sets currently in place.[2](34)

The petitioners propose that, upon the effective date of the merger, ENGI will depreciate classes of assets using the weighted average depreciation rates of the three utilities. However, ENGI would initiate a depreciation study shortly after the merger, and appropriate depreciation

rates would be submitted to this commission following the conclusion of the study.

The petitioners introduced draft versions of supplemental indentures to the existing bond indentures. In accordance with those instruments, ENGI, the assets of which will be the combined assets of the utility companies, will grant liens on the property of each of the utilities to the bondholders of the others, with the end result being that each bondholder will have a lien on the same property of ENGI. The bondholders will further agree that all such liens will have equal priority. The supplemental indentures also contain reconciling amendments that are necessary to eliminate conflicting provisions among the various first mortgage indentures and to simplify the administration of the indentures. At the time of the hearing, all bondholders had received the draft supplemental indentures, and all but one had responded to the petitioners. All of those responses had been favorable.

The only adjustment to the terms of any of the long-term debt that will be made in connection with the merger will be an increase in the sinking fund payments for the 6% MGC bonds due in 1992, from 2% to 5% annually. The annual sinking fund payment will be $50,000, until redemption in 1992.

In the merger, all of the capital stock of MGC and CNGC, both common and preferred, all of which is held by ENI, will be cancelled. As a result, the consolidated capital structure of ENGI only will include the preferred stock of GSI; the relatively low-cost preferred stock of MGC ($668,600 paying 7%) and CNGC ($125,600 paying 5.5%) will have been eliminated from the consolidated capital structure of the petitioners. The GSI preferred stock is the only stock of the petitioners that is not held by ENI. As a result, based upon September 30, 1987 actual capital structures, the weighted average cost rate of ENGI's pro forma capital is .09% higher than the actual weighted average cost. That increased cost of capital, at September 30, 1987, would equal $70,535. As a result of prehearing meetings with the commission staff, the petitioners agreed to a reduction by the commission of the overall cost of capital for the purposes of ratemaking in the currently pending rate cases. The cancellation of the MGC and CNGC preferred stock could have been avoided by creating series of ENGI preferred stock having identical rights and preferences, which would have required the approval of the holder of the GSI preferred stock.

IV. *COMMISSION ANALYSIS*

[1] Based on the evidence presented, the commission concludes that the merger of CNGC and MGC with and into GSI is in the public good and therefore will approve the merger and the related modifications of long-term debt instruments as detailed above. The merger will result in an opportunity to save costs through the efficiencies and economies of scale of one entity rather than the current three.

[2] While the commission finds no reason to maintain the separate corporate

entities, it is concerned that the petitioners have not shown that the benefits of this action (i.e., future savings stemming from the changes contemplated in this docket) outweigh the approximately $70,535 in costs associated with eliminating the relatively low cost preferred stock of MGC and CNGC. For the currently pending rate cases, the company has agreed that its

cost of capital shall be adjusted such that this cost increase would not be passed on to ratepayers at this time. If the company does not agree to such an adjustment in future cases, its direct prefiled testimony in such cases should provide sufficient evidence to show the reasonableness of this additional cost of capital.

[3] The commission finds that the general terms and conditions of the GSI tariff, with the exception of those provisions which the petitioners noted would have a revenue effect (rates for service, employee discounts, thermal billing, and combined service) are just and reasonable for tariffs immediately following the merger. ENGI shall file its original tariff pages with effective dates of October 1 to reflect said terms, conditions and rates no later than October 1. The rate terms of those tariffs will presumably change and be refiled upon disposition of the petitioners' pending rate proceedings.

The petitioners shall, following the merger, initiate a depreciation study and submit new depreciation rates based upon such study as soon as they are available, but no later than one year from the date of this report and order. Following the merger, the petitioners shall file with this commission the final supplemental indentures, and any other agreements, between them or ENGI and the holders of their present long-term debt affecting the terms of such debt.

Our order will issue accordingly.

ORDER

Based upon consideration of the foregoing REPORT APPROVING MERGER, which is incorporated herein by reference; it is hereby

ORDERED, that the merger of Concord Natural Gas Corporation and Manchester Gas Company with and into Gas Service, Inc., is hereby approved as detailed in the foregoing report; and it is

FURTHER ORDERED, that a change of name from Gas Service, Inc. to EnergyNorth Natural Gas, Inc., following the merger, is hereby approved; and it is

FURTHER ORDERED, that the application of the general terms of the Gas Service, Inc. tariff govern the provision of all service of EnergyNorth Natural Gas, Inc. rendered on and after the effective date of the merger; and it is

FURTHER ORDERED, that modification of the long-term debt instruments of each of Gas Service, Inc., Concord Natural Gas Corporation and Manchester Gas Company in connection with the merger in substantial accordance with the terms presented at the hearing, is hereby approved; and it is

FURTHER ORDERED, that the petitioners herein shall file tariffs and a depreciation study as detailed in the foregoing report; and it is

FURTHER ORDERED, that petitioners shall file with the commission under this docket number the final supplemental indentures and any other agreements between them or ENGI and the holders of their present long term debt affecting the terms of such debt within thirty days from the execution of said documents; and it is

FURTHER ORDERED, that this order and the foregoing report is not dispositive

of the ratemaking treatment of the various costs of the merger approved herein.

By order of the Public Utilities Commission of New Hampshire this ninth day of September 1988.

FOOTNOTES

[1]GSI has the largest number of customers of the three petitioners.

[2]The petitioners have engaged consultants to design consolidated rates that would achieve the same revenue as that realized by the three utilities under their separate rates, while minimizing the impact on individual customers and on existing customer classes. Examples of their work product were introduced at the hearing.

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NH.PUC*09/09/88*[52046]*73 NH PUC 364*Stewartstown Steam Company

[Go to End of 52046]

73 NH PUC 364

Re Stewartstown Steam Company

DR 86-98
Order No. 19,170

New Hampshire Public Utilities Commission

September 9, 1988

MOTION by a steam company for arbitration of its dispute with an electric utility concerning the interconnection of a proposed small power production facility; denied.

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1. PROCEDURE, § 29 — Disposal of issues; decision — Arbitration — Informal process — Requirements for initiation — Interconnection disputes — Electric.

[N.H.] A motion by a steam company, requesting arbitration of its dispute with an electric utility concerning the interconnection of the steam company's proposed small power production facility, was not interpreted as a request for informal arbitration, because the motion did not adequately provide, either in form or substance, a written agreement between the steam company and the utility delineating the issues and areas of dispute, which was required to initiate an informal arbitration process. p. 366.

2. PROCEDURE, § 29 — Disposal of issues; decision — Arbitration — Formal or informal arbitration — Sequence — Interconnection disputes — Electric.

[N.H.] The commission denied a request by a steam company for arbitration of its dispute

with an electric utility concerning the interconnection of the steam company's proposed small power production facility, where the commission determined that the steam company had implicitly requested formal arbitration, but should first avail itself of the provision and guidelines established for informal arbitration of interconnection-related disputes; denial of the motion did not compromise any rights the steam company had to request formal arbitration once good cause was demonstrated for doing so. p. 366.

3. PROCEDURE, § 29 — Disposal of issues; decision — Arbitration — Informal process — Requirements for initiation — Interconnection disputes — Electric.

[N.H.] To initiate an informal arbitration process available for the resolution of certain interconnection-related disputes between the developer of a proposed small power production facility and an electric utility, the developer and the utility must file a written agreement delineating all issues and disputes concerning the interconnection of the proposed facility, so that the commission can ensure that the informal arbitration process would be efficiently utilized in an attempt to achieve a just and reasonable resolution of disputed interconnection issues. p. 366.

4. COGENERATION, § 12 — Operating practices — Service obligations — Interconnection — Construction of facilities — Commercial operation date — "Force majeure" event.

[N.H.] The commission held at abeyance a request by the developer of a proposed small

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power production (SPP) facility to deem the bankruptcy of an electric utility a "force majeure" event that would toll the required date of commercial operation of its SPP facility, but granted the developer an opportunity to appear before the commission to present evidence in support of such a finding; the SPP developer bore a heavy burden of proof to demonstrate why the commission should waive the previously articulated on-line date policy for its particular facility and situation, in light of the commission policy that placed on SPP project developers the risk of developing and constructing their projects on time and as proposed. p. 367.

By the COMMISSION

REPORT

I. INTRODUCTION

On June 27, 1988 Stewartstown Steam Company (Stewartstown), the holder of a long term small power producer and cogenerator (SPP) rate approved by the commission in the above referenced docket by order no. 18,573 (72 NH PUC 62) and reaffirmed by order no. 18,613, (72 NH PUC 97) filed two motions and a supporting memorandum concerning its proposed 13.8 megawatt biomass-electrical generating plant to be located in West Stewartstown, New Hampshire. Stewartstown filed a MOTION OF STEWARTSTOWN STEAM COMPANY FOR ARBITRATION PURSUANT TO COMMISSION ORDER #14,797 (66 NH PUC 83), DOCKET 80-246, and a MOTION FOR INTERPRETATION OF RATE ORDER PROVISION along with a supporting memorandum. In our discussion that follows we deny Stewartstown's motion seeking formal arbitration but offer guidance for alternative arbitration procedures. With

regard to the motion for interpretation we hold at abeyance Stewartstown's request for a commission finding at this time and rather grant the request for the opportunity to appear before the commission in support of its position.

II. DISCUSSION

A. Motion Requesting Commission Arbitration

Stewartstown is seeking arbitration of certain interconnection related disputes it has with Public Service Company of New Hampshire (PSNH) pursuant to *Re Small Power Producers and Cogenerators,* Docket DR 80-246, Report and Supplemental Order No. 14,797, 66 NH PUC 83 (March 20, 1981) (hereinafter referred to as order 14,797). Order No. 14,797 established, *inter alia,* SPP interconnection procedures including those related to interconnection disputes between an SPP and the purchasing utility.

Stewartstown's motion avers that a mutually agreeable interconnection arrangement has not been achieved through discussion and negotiation with PSNH. Stewartstown takes the position that a satisfactory interconnection arrangement can be made at an existing 34.5 KV line adjacent to the project site. Stewartstown asserts that the PSNH position is that a dedicated line over a separate right-of-way from the project site some 35 miles to the Lost Nation Substation is necessary in order to meet interconnection standards. Stewartstown estimates that implementation of these two alternatives would cost $100,000 and $5,500,000, respectively.

In order 14,797 the commission

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provided for the arbitration of interconnection issues on both an informal and formal basis. An informal arbitration procedure was provided for as follows:

> On an informal basis the parties need only to agree among themselves in writing, that the commission shall arbitrate any areas of dispute and forward said written agreement to the commission whereupon staff of the commission will informally resolve the issues delineated in the agreement of the parties or will establish any other reasonable process by which to resolve such issues described. 66 NH PUC 91, (1981).

[1] We do not interpret the Stewartstown motion as a request for the informal arbitration process provided for in order 14,797. Mainly, the subject motion does not adequately provide in either form or substance the required written agreement between Stewartstown and PSNH delineating the issues and the areas of dispute required to initiate an informal arbitration process. Nor does the motion provide enough information to warrant a formal arbitration proceeding. Stewartstown implicitly requests formal arbitration as provided for in order 14,797 as follows:

> . . . [T]o the extent consistent with the above described scope of this commission's authority to arbitrate the commission, upon the motion of any party, may arbitrate any or all issues including those addressed by this order, *if the commission perceives its arbitration authority is required to expedite matters and reduce litigation expense to all parties.* The commission retains absolutely the prerogative to deny any motion request on arbitration without stating its reason for denial inasmuch as the commission finds that upon publication of this order sufficient legal and administrative guidelines will be

available to the parties to resolve all possible issues that may arise. 66 NHPUC 91, (1981) (emphasis added).

[2-3] Based on our interpretation that Stewartstown is requesting formal commission arbitration we will deny the motion in that we find that Stewartstown should first avail itself of the provision and guidelines established in order 14,797 for informal arbitration. However, our denial of this motion at this time does not compromise any rights Stewartstown may have to request formal arbitration once it demonstrates good cause for doing so. In order to properly initiate an informal arbitration process pursuant to order 14,797 we require that Stewartstown and PSNH file a written agreement with the commission delineating any and all issues and disputes concerning the interconnection of the proposed small power production facility. By providing said written agreement we will be best able to ensure that the informal arbitration process is being efficiently utilized in an attempt to achieve a just and reasonable resolution of disputed interconnection issues.

B. MOTION FOR INTERPRETATION OF RATE ORDER PROVISION

Stewartstown's MOTION FOR INTERPRETATION OF RATE ORDER PROVISION moves that the commission deem the bankruptcy proceeding filed on January 29, 1988 by PSNH a “force majeure” event which will toll the required date of commercial operation (September 1, 1989) specified in its rate order. Stewartstown also submitted a memorandum in support of this motion.

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Stewartstown claims that the PSNH bankruptcy prior to the closing of financing on its small power production facility has made conventional financing impossible to obtain. In its memorandum Stewartstown argues that the determination of PSNH's financial condition apparently has influenced the financial community to withhold project financing until the issues surrounding the viability of rate orders are resolved. Stewartstown requests that it be given the opportunity to appear before the commission and present evidence to support a commission finding that the PSNH bankruptcy tolls the on-line date provision of the rate order for the period between the filing of PSNH's bankruptcy petition and the final resolution of the validity of the rate order by the bankruptcy proceeding and any subsequent proceedings at the commission.

[4] We will hold at abeyance Stewartstown's request that the commission deem the PSNH bankruptcy a “force majeure” event which will toll the required date of commercial operation of its SPP facility. Rather, we will grant Stewartstown's request that it be given the opportunity to appear before the commission and present evidence in support of such a commission finding. However, Stewartstown carries a heavy burden of proof to demonstrate why we should waive our previously articulated on-line date policy for its particular facility and situation.

Our policy places on SPP project developers the risk that they will be able to develop and construct their projects on time and as proposed. This risk rightly belongs with the developer for he stands to gain the most from a successfully completed project. In making our prior decisions, we have not been willing to shift the risk of project development to ratepayers.[1(35)]

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 STEWARTSTOWN STEAM COMPANY FOR ARBITRATION PURSUANT TO COMMISSION ORDER NO. 14,797, DOCKET 80-246, is denied; and it is

FURTHER ORDERED, that with regard to Stewartstown Steam Company's (Stewartstown) MOTION FOR INTERPRETATION OF RATE ORDER PROVISION we hold at abeyance the request for a commission finding at this time and rather grant Stewartstown's request for the opportunity to appear before the commission in support of its motion; and it is

FURTHER ORDERED, that a hearing be held, pursuant to RSA Chapter 541-A:16 and Rule Puc 203.05 before said Public Utilities Commission at its offices in Concord, 8 Old Suncook Road, Building #1 in said State at ten o'clock in the forenoon on the November 17, 1988, for the purpose of providing Stewartstown with the opportunity to appear before the commission and present evidence to support its request that the Public Service Company of New Hampshire Bankruptcy be deemed a “force majeure” event which will toll the required date of commercial operation specified in its small power production and cogenerator rate order; and it is

FURTHER ORDERED, that pursuant to RSA 541-A:17 and Puc §203.02, any party seeking to intervene in the proceeding shall submit a motion to intervene with a copy to the petitioner, at least three (3) days prior to the prehearing conference.

FURTHER ORDERED, that pursuant to N.H. Admin. Rule Puc 203.01, the petitioner notify all persons desiring to be

heard to appear at said hearing by causing an attested copy of this order of notice to be published once in a newspaper having general circulation in that portion of the State in which operations are proposed to be conducted, such publication to be no later than November 1, 1988, said publication to be documented by affidavit filed with this office on or before November 17, 1988.

By order of the Public Utilities Commission of New Hampshire this ninth day of September, 1988.

FOOTNOTES

[1]See for example, *Re New England Alternate Fuels, Inc. — Swanzey*, Docket DR 86-152, 71 NH PUC 423 (July 23, 1986); *Re Pinetree Power-North*, Docket DR 86-100 *et al.*, 71 NH PUC 638 (November 3, 1986); *Re TDEnergy, Inc.*, Dockets DR 84-139 and DR 85-41, 72 NH PUC 85 (March 12, 1987); *Re HDI-Hinsdale Inc. — Upper Robertson Dam*, Docket DR 84-347, 72 NH PUC 169 (May 11, 1987) and 72 NH PUC 230 (June 19, 1987); *Re D.J. Pitman International Corp.*, Docket DR 85-139, 72 NH PUC 166 (May 11, 1987) and 72 NH PUC 232 (June 19, 1987); *Re Vicon Recovery Systems, Inc.*, Docket DR 86-130, 72 NH PUC 298 (July 13, 1987)

and 72 NH PUC 366 (August 20, 1987); and *Re Northeast Hydrodevelopment Corp. — McLane Dam*, Docket DR 85-186, 73 NH PUC 292 (August 15, 1988).

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[Go to End of 52047]

73 NH PUC 368

Re New England Telephone and Telegraph Company

DR 88-127
Order No. 19,172

New Hampshire Public Utilities Commission

September 9, 1988

ORDER approving annual reclassification of rate groups of various exchanges and localities of a local exchange telephone carrier.

RATES, § 202 — Unit for rate making — Classes of service — Telephone toll, switching, and exchange — Annual reclassification.

[N.H.] A local exchange telephone carrier (LEC) was granted approval to change rate groups of various exchanges and localities based on an annual study, which showed that certain exchanges or localities exceeded the upper limit for their rate group for two consecutive studies, where the commission found that the results of the study conformed to approved procedures; the LEC was directed to give affected customers onetime notice of the approval by bill insert summarizing the impact on the customers' local exchange rate.

By the COMMISSION:

ORDER

WHEREAS, on August 31, 1988, New England Telephone & Telegraph Company (NET) filed with this commission the following revisions to its Tariff No. NHPUC-75:

Part A — Section 5:
Thirteenth Revision of Page 8
Seventh Revision of Page 9.1
Eighth Revision of Page 22
Seventh Revision of Page 23
Sixth Revision of Page 24
Sixth Revision of Page 25

Seventh Revision of Page 26
Fifth Revision of Page 27

and;

WHEREAS, such revisions propose changes to Rate Groups of various exchanges and localities based upon NET's annual study conducted according to Part A, Section 5.1.3 of cited tariff; and

WHEREAS, said study has shown that the following exchanges/localities have

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exceeded their rate group upper limit for two consecutive studies:

Berlin
Center Harbor
Concord
Dublin
Fitzwilliam
Franconia
Gorham
Hampton
Hancock
Harrisville
Lebanon
Madison
Merrimack
Milton
Nashua
New Boston
North Woodstock
Peterborough
Piermont Locality
Raymond
Sanbornville
Sullivan
Sunapee
Tamworth
Winchester

and;

WHEREAS, the commission finds the results of the NET study conform to approved procedures outlined in Section 5.1.3 of Part A, Tariff No. NHPUC-75; it is

ORDERED, that 13th Revised Page 8, 7th Revised Page 9.1, 8th Revised Page 22, 7th Revised Page 23, 6th Revised Pages 24 and 25, 7th Revised Page 26 and 5th Revised page 27 of Part A, Section 5 be, and hereby are, approved for effect on September 30, 1988; and it is

FURTHER ORDERED, that affected customers be given one-time notice of this approval by bill insert summarizing the impact on those customers' local exchange rate.

By order of the Public Utilities Commission of New Hampshire this ninth day of September, 1988.

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NH.PUC*09/12/88*[52048]*73 NH PUC 369*Gas Service, Inc.

[Go to End of 52048]

73 NH PUC 369

Re Gas Service, Inc.

DE 88-058
Order No. 19,174

New Hampshire Public Utilities Commission

September 12, 1988

ORDER nisi authorizing a gas distribution utility to provide gas service to a specified area.

SERVICE, § 199 — Extensions — Gas — Grounds for authorizing.

[N.H.] A gas distribution utility was authorized to provide gas service to a specified area, unless a request for hearing was filed with the commission or unless the commission ordered otherwise prior to the effective date of the authority, where the utility indicated its intention to serve the area under its regularly filed tariff, no other gas utility had franchise rights in the area, and the commission found that availability of an additional alternative energy source in the area would be for the public good.

By the COMMISSION:

ORDER

WHEREAS, Gas Service, Inc. (company), a gas public utility operating under the jurisdiction of this commission, by a petition dated April 11, 1988, seeks authority under RSA 374:22 to operate as a public utility in the town of Hollis; and

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WHEREAS, no other gas utility has franchise rights in the area sought and the petitioner has communicated his intention to serve the area under its regularly filed tariff; and

WHEREAS, after investigation the commission finds that availability of an additional

alternative energy source in this town would be for the public good; and

WHEREAS, the public should be offered an opportunity to respond in support or opposition to 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 26, 1988; and it is

FURTHER ORDERED, that Gas Service, Inc. affect 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 19, 1988; and be designated in an affidavit to be made on a copy of this Order and filed with this office on or before October 3, 1988; and it is

FURTHER ORDERED, NISI that Gas Service, Inc. be authorized pursuant to RSA 374:22, to extend mains and provide service in the town of Hollis; and it is

FURTHER ORDERED, that such authority shall be effective on October 3, 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, and it is

FURTHER ORDERED, that pursuant to PUC Order No. 15,768 (67 NH PUC 541), the company provide sufficient supplemental storage volumes for the expected peak day including the anticipated demand from the new service area; and it is

FURTHER ORDERED, that the company shall file revised tariff pages reflecting the expansion of service territory to include Hollis.

By order of the Public Utilities Commission of the state of New Hampshire this twelfth day of September, 1988.

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NH.PUC*09/12/88*[52049]*73 NH PUC 370*Manchester Gas Company

[Go to End of 52049]

73 NH PUC 370

Re Manchester Gas Company

DE 88-059
Order No. 19,175

New Hampshire Public Utilities Commission

September 12, 1988

ORDER nisi authorizing a gas distribution utility to provide gas service to a specified area.

SERVICE, § 199 — Extensions — Gas — Grounds for authorizing — Order nisi.

[N.H.] A gas distribution utility was authorized to provide gas service to a specified area, unless a request for hearing was filed with the commission or unless the commission ordered otherwise prior to the effective date of the authority, where the utility indicated its intention to serve the area under its regularly filed tariff, no other gas utility had franchise rights in the area, and the commission found that availability of an additional alternative energy source in the area would be for the public good; pursuant to a prior order, the utility was also directed to provide sufficient supplemental storage volumes for the expected peak day including the anticipated demand from the new service area.

By the COMMISSION:

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ORDER

WHEREAS, Manchester Gas Company (company), a gas public utility operating under the jurisdiction of this commission, by a petition dated April 11, 1988, seeks authority under RSA 374:22 to operate as a public utility in the towns of Londonderry and Litchfield; and

WHEREAS, no other gas utility has franchise rights in the area sought and the petitioner has communicated his intention to serve the area under its regularly filed tariff; and

WHEREAS, after investigation the commission finds that availability of an additional alternative energy source in these towns would be for the public good; and

WHEREAS, the public should be offered an opportunity to respond in support or opposition to 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 26, 1988; and it is

FURTHER ORDERED, that Manchester Gas Company affect 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 19, 1988; and be designated in an affidavit to be made on a copy of this order and filed with this office on or before October 3, 1988; and it is

FURTHER ORDERED, NISI that Manchester Gas Company be authorized pursuant to RSA 374:22, to extend mains and provide service in the towns of Litchfield and Londonderry; and it is

FURTHER ORDERED, that such authority shall be effective on October 3, 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, and it is

FURTHER ORDERED, that pursuant to PUC Order No. 15,768 (67 NH PUC 541), the company provide sufficient supplemental storage volumes for the expected peak day including the anticipated demand from the new service area; and it is

FURTHER ORDERED, that the company shall file revised tariff pages reflecting the expansion of service territory to include Litchfield and Londonderry.

By order of the Public Utilities Commission of the state of New Hampshire this twelfth day of September, 1988.

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NH.PUC*09/15/88*[52050]*73 NH PUC 371*Northern Utilities, Inc.

[Go to End of 52050]

73 NH PUC 371

Re Northern Utilities, Inc.

DF 88-120
Order No. 19,178

New Hampshire Public Utilities Commission

September 15, 1988

PETITION for authority to issue short-term notes not to exceed $10,000,000; granted.

SECURITY ISSUES, § 98 — Kinds and proportions — Short-term notes — Arrangement of permanent financing.

[N.H.] The commission granted a petition for authority to issue short-term notes not to exceed $10,000,000, despite its concern about the level of short-term debt in the capital structure of the petitioning utility, because the grant of authority to issue short-term notes was in the public good until permanent financing could be

arranged; however, the utility was directed to have permanent financing in place or scheduled by a specified date so as to reduce its short-term debt level, and the commission ordered that the short-term debt level would revert to a limitation described in a previous order establishing the aggregate short-term indebtedness in an amount not to exceed 10% of the net fixed capital account.

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 15, 1988, a petition for authority pursuant to R.S.A. 369:1 and 4 to issue short term notes not to exceed $10,000,000;

and

WHEREAS, Northern Utilities, Inc. estimates capital expenditures totalling $5,187,000 for its 1989 fiscal year commencing October 1, 1988; and

WHEREAS, Northern Utilities, Inc. also states that their total outstanding short-term notes payable was $4,500,000 on June 30, 1988 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 $10,000,000, by Order No. 18,943 issued September 21, 1987 (72 NH PUC 581) by the New Hampshire Public Utilities Commission; and

WHEREAS, Northern Utilities, Inc., having filed a request for approval to acquire Petrolane-Southern New Hampshire Gas Company; and

WHEREAS, Northern Utilities, Inc. requests that authorization of the short term debt level of $10,000,000 be granted to terminate August 31, 1989; and

WHEREAS, after investigation of the filing the commission is concerned about the level of short term debt in the capital structure; and

WHEREAS, the New Hampshire Public Utilities Commission believes that it would be in the public good to grant said request until permanent financing can be arranged; 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 1, 1988 and to terminate February 28, 1989; and it is

FURTHER ORDERED, that Northern Utilities, Inc., shall on or before February 28, 1989 have in place or scheduled permanent financing so as to reduce its short term debt level; and it is

FURTHER ORDERED, that Northern Utilities, Inc., short term debt level will revert to the limitation describe in the Commission's Supplemental Order No. 7,446 which establishes the aggregate short-term indebtedness in an amount not to exceed ten percent of its net fixed capital account; 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 September 1, 1988 unless the commission provides otherwise in a supplemental order issued prior to the effective date.

By order of the Public Utilities Commission of New Hampshire this fifteenth day of September, 1988.

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NH.PUC*09/16/88*[52051]*73 NH PUC 373*Union Telephone Company

[Go to End of 52051]

73 NH PUC 373

Re Union Telephone Company

DR 88-128
Order No. 19,180

New Hampshire Public Utilities Commission

September 16, 1988

ORDER reducing rates for service rendered by an independent telephone company.

RATES, § 532 — Telephone — Rate reduction — Earnings in excess of allowed return.

[N.H.] A reduction in the rates of an independent telephone company was ordered after a review of its annual earnings indicated financial results well in excess of the allowed rate of return.

By the COMMISSION:

ORDER

WHEREAS, the Public Utilities Commission reviewed the earnings of all the independent telephone companies for the year ended December 31, 1987; and

WHEREAS, the resulting calculation of Union Telephone Company's (Union) earnings indicated financial results well in excess of their allowed rates of return; and

WHEREAS, the Commission was notified by memorandum of these results on April 15, 1988; and

WHEREAS, meetings were held between members of the commission staff and Union Telephone Company on June 17, 1988; and

WHEREAS, on July 8, 1988 Union provided staff with a written update of their results which included some pro forma adjustments to reflect ongoing changes in revenues and expenses and interstate to intrastate shifts in cost separations; and

WHEREAS, there have been several meetings between staff and the Company to discuss the revisions to the initial data; and

WHEREAS, staff has reviewed these adjustments and Union and staff agreed to an overall rate reduction of $176,000; and

WHEREAS, on August 31, 1988 a stipulation outlining the specifics of this $176,000 reduction of revenue was submitted by Union and approved by Finance Director Eugene F. Sullivan; and

WHEREAS, the commission has reviewed the stipulation agreement and agrees that the proposed reduction is reasonable and appropriate; it is

ORDERED, that these reductions in rates shall be effective for service rendered on or after September 1, 1988.

By order of the Public Utilities Commission of New Hampshire this sixteenth day of September, 1988.

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NH.PUC*09/22/88*[52052]*73 NH PUC 374*EnergyNorth, Inc.

[Go to End of 52052]

73 NH PUC 374

Re EnergyNorth, Inc.

Additional party: Northern Utilities

DR 88-083
Order No. 19,181

New Hampshire Public Utilities Commission

September 22, 1988

ORDER authorizing certain revisions to interruptible gas sales contracts of gas distribution utilities.

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1. RATES, § 380 — Gas — Special factors — Interruptible service — Sales contracts — Pricing flexibility — Interests of firm ratepayers — Local distribution company.

[N.H.] In a proceeding to address generic issues related to interruptible gas sales contracts of gas distribution utilities, the commission approved stipulations, which were found to strike a reasonable balance between the need for greater pricing flexibility in a competitive fuels market and the regulators' duty to safeguard the interests of firm ratepayers; the stipulations included (1) additional flexibility to set prices on a customer-by-customer basis, (2) a provision that a customer's interruptible payments must be equal to or greater than the marginal cost of gas supplied to the customer, (3) a requirement that new interruptible customers must be charged for investment costs incurred by the utilities in providing interruptible service, (4) a $3 per month customer charge, and (5) expansion of the period of availability of interruptible gas. p. 378.

2. RATES, § 380 — Gas — Interruptible service — Competition with unregulated fuel oil suppliers — Pricing flexibility — Customer-by-customer basis.

[N.H.] In a proceeding to address generic issues related to interruptible gas sales contracts of gas distribution utilities, the commission noted that the ability of a gas distribution utility to compete effectively with unregulated fuel oil suppliers was partly dependent on the utility's degree of freedom in pricing its product, and found that, although the utilities currently had the ability to discount the prices of alternate fuel suppliers, additional flexibility was warranted, and that setting prices on a customer-by-customer basis would allow the utilities to protect and expand their market shares. p. 378.

3. RATES, § 380 — Gas — Special factors — Interruptible service — Cost-reflective competitive pricing — Marginal cost-based minimum price — Purposes.

[N.H.] In a proceeding to address generic issues related to interruptible gas sales contracts of gas distribution utilities, the commission approved, as another step in the direction of cost-reflective competitive pricing, a stipulation requiring that a customer's interruptible payments must be equal to or greater than the marginal cost of gas supplied to the customer, subject to a condition that lower cost gas supplies must be used to determine rates for firm customers and not rates for interruptible customers, in order to minimize any potential for abuse; the purposes of the stipulation were (1) to allow the utilities to take full advantage of lower cost spot purchases made during the summer months by enabling them to offer lower prices in response to competition from alternative fuel suppliers, and (2) to prevent uneconomic gas transactions, and thus benefit firm ratepayers, by providing for a marginal cost-based minimum price, inclusive of distribution losses and the state franchise tax. p. 378.

4. RATES, § 380 — Gas — Special factors — Interruptible service — Incremental investment costs — New customers.

[N.H.] In a proceeding to address generic issues related to interruptible gas sales contracts of gas distribution utilities, the commission approved a stipulation requiring that new interruptible customers must be charged for investment costs incurred by the utilities in providing interruptible service, because the provision was

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properly designed to insure that those customers that received the benefits of interruptible service would pay the incremental costs incurred; the commission found that the provision was reasonable and economically desirable, although the requirement might deter some potential new customers. p. 378.

5. RATES, § 384 — Gas — Kinds and classes of service — Interruptible service — Monthly customer charge — Meter reading and billing costs.

[N.H.] In a proceeding to address generic issues related to interruptible gas sales contracts, a gas distribution utility was permitted to include in its contracts a $3 per month customer charge, which the commission found would ensure that meter reading and billing costs were borne by those customers that caused the costs to be incurred. p. 378.

6. SERVICE, § 339.4 — Gas — Allocation of supply — Interruptible service — Period of availability — Expansion — Quality of service to firm ratepayers.

[N.H.] In a proceeding to address generic issues related to interruptible gas sales contracts of gas distribution utilities, the commission found that expansion of the period of availability of interruptible gas was an important new addition to the terms of interruptible service, because the commission expected that, coupled with a requirement to price above marginal cost, the new provision would enhance the image of interruptible gas as an alternative to other fuels, and would also increase the dollar margin flowing to firm ratepayers; however, the utilities were cautioned not to view the expanded availability of interruptible service as a weakening of the commission's position on quality of service to firm ratepayers, and the commission reiterated that under no circumstances could the utilities provide interruptible service during the winter peak periods when such service resulted in curtailment or higher prices, or both, to firm ratepayers. p. 379.

APPEARANCES: Jacqueline Fitzpatrick, Esq. for EnergyNorth, Inc.; Eli Farrah, Esq. for Northern Utilities; Michael Holmes, Esq. for the Office of the Consumer Advocate; Mary Hain, Esq. for the commission and commission staff.

By the COMMISSION:

REPORT

I. *PROCEDURAL HISTORY*

On May 3, 1988 the commission issued Order No. 19,086 (73 NH PUC 215) rejecting Northern's proposal to extensively modify its interruptible sales contract with Elliot & Williams Roses. The commission's rejection was based largely on the fact that the proposed new contract differed substantially and substantively from the agreement then on file. In recognition of the growing competitiveness in the alternative fuels market, the commission provided Northern with the ability to respond to the price cutting practices of alternative fuel suppliers. However, the commission found that other issues raised in the Elliot & Williams Roses filing would be more appropriately addressed in a generic proceeding.

On June 6, 1988 the commission issued an order of notice establishing a procedural schedule to address generic issues related to the interruptible gas sales contracts of Northern Utilities (Northern) and the EnergyNorth companies (EnergyNorth). On July 22, 1988 Northern filed the direct testimony of Charles T. Ellis. This was followed on August 9, 1988 by the direct testimony of Donald S. Inglis on behalf of Concord Natural Gas Corp, Gas Service, Inc. and Manchester Gas

Company. In response, Staff filed testimony on August 12, 1988 in regard to Northern and August 17, 1988 in regard to EnergyNorth.

EnergyNorth representatives met with Staff and the Consumer Advocate on August 15, 1988

for preliminary discussions and to solicit further information about Mr. Inglis' testimony. As a result of this meeting the company filed on August 22, 1988 responses to Staff oral data requests. Responses by Northern to Staff oral data requests were received on August 17, 1988.

On August 23, 1988 Northern's representatives reached agreement with Staff and Consumer Advocate on the form of a Stipulation and Agreement which disposed of all issues in this case. A similar agreement with EnergyNorth was reached on August 24, 1988.

II. *POSITIONS OF THE PARTIES*

A. *EXISTING POLICY ON INTERRUPTIBLE GAS PRICING*

Prior to May of 1988 the price of interruptible gas to Northern's customers was set at a level equal to the BTU equivalent of the customer's posted alternative fuel price, provided that the price exceeded Northern's average commodity cost of gas by at least 10¢ per Mcf. In Order No. 19,086 the commission allowed Northern to price below the alternative fuel posted price in order to compete more effectively with alternative fuel suppliers. This change brought Northern's pricing practices closer to but not identical to those of EnergyNorth.

At this time there are small but important differences between the companies. The major differences lie in the determination of the floor price for interruptible gas. In Northern's case, the floor price is the average commodity cost to the company plus 10¢ per Mcf. Northern, however, receives all of its summer gas supplies from Granite State Transmission Company (Granite) and therefore its average commodity cost during the summer months is equal to Granite's commodity rate. Consequently, Northern's floor price largely reflects the lower cost of spot gas purchases that Granite has been making in the last few years. EnergyNorth, on the other hand, is currently required to set its floor price at the relatively high CD6 commodity rate of Tennessee Pipeline Company even though the summer purchases consist largely of lower cost spot gas. EnergyNorth is not, however, required to add a 10¢ per Mcf cushion to Tennessee's commodity rate.

B. *Northern*

Northern contended that strong competition from fuel oil suppliers and an inflexible interruptible pricing formula have combined over the last few years to produce a significant erosion in its interruptible gas market. To counter this trend Northern proposed to make the following changes to existing and new contracts:

1. Discount the posted alternative fuel price on a customer by customer basis instead of the present practice of charging the same price to all interruptible customers with the same alternative fuel;

2. Replace the *Journal of Commerce Daily Petroleum Prices* with the *Platt's Oilgram* as the reference for alternative fuel posted prices. In addition, Northern recommended that the monthly average posted price be determined by averaging the daily posted prices rather than the posted prices for the first four Mondays in a month;

3. Extend the period of availability of

interruptible gas to include days during the winter months when volumes of underground

storage gas are surplus to the requirements of firm customers;

4. Amend the basis for determining the floor price for interruptible gas to reflect the marginal cost of the gas actually being used to supply an interruptible customer;

5. Replace the constant BTU content of gas currently used in the interruptible gas pricing formula with a variable heating value to better reflect the content of the Canadian gas entering Northern's system.

C. *EnergyNorth*

Like Northern, EnergyNorth is concerned that the current method of determining the floor price for interruptible gas leaves the company vulnerable to competition from alternative fuel suppliers. To rectify this situation, EnergyNorth proposed the following contractual changes:

1. Set the floor price for interruptible gas equal to the cost of gas delivered (including transportation) by the least cost supplier to the company;

2. Extend the period of availability of interruptible gas into the winter shoulder months provided that in so doing firm customers are not harmed;

3. Replace the *Journal of Commerce* with *Platt's Oilgram* as the basis of determining alternative fuel posted prices.

In addition to the above contractual changes EnergyNorth proposed to retain for its stockholders a portion of the margin generated from interruptible sales. The margin retained would compensate the company for the risk involved in making interruptible sales and provide an incentive to expand the market for such gas. The company recommended that for 1988 and each year thereafter the first $571,679 of interruptible sales margin continue to flow to firm ratepayers. Any margin over the $571,679 will be split 75% to firm ratepayers and 25% to be retained by the company.

In the absence of a margin sharing mechanism, EnergyNorth requested that any bad debt on its interruptible accounts be treated as an allowable expense when calculating the interruptible margin. In other words, the margin earned on interruptible sales would be determined by subtracting from interruptible revenues both purchased gas costs and non-recoverable bad debts.

D. *Staff*

Staff's position on the determination of the interruptible floor price was generally supportive of the view propounded by Northern but differs in two important respects. First, it believed that the floor price should equal the marginal cost of gas supplied to the customer (including any distribution losses incurred in delivering the gas to the customer) rather than the marginal commodity cost of the gas used in supplying the customer. Staff's support for the marginal cost based floor price was conditional, however, on a commitment by Northern to provide firm customers with the first option on all volumes of gas made available at a cost lower than those being used to serve firm customers. Second, Staff argued that the floor price should also take into account that the state franchise tax is levied on interruptible gas sales.

Staff opposed EnergyNorth's proposal to set the floor price equal to the commodity cost of the lowest cost supplier because it believes the proposal would have a detrimental impact on firm ratepayers.

In supporting a marginal cost based floor price Staff also asserted that interruptible gas could be sold at prices which do

not recover all costs of service. Staff therefore argued that provisions should be inserted in existing and new contracts which require customers to cover the customer-related costs of purchasing and installing meters and services, the distribution mains local to the customer's premises, and any meter reading, billing and maintenance expenses.

In addition, Staff recommended that both Northern and EnergyNorth be required when preparing future cost of service studies to identify the costs properly attributable to the interruptible class. Only then, Staff argued, would the commission be in a position to determine whether interruptible service programs benefit firm customers or are subsidized by them.

With regard to EnergyNorth's margin sharing proposal, Staff contended that the “true” margin earned on interruptible sales is considerably lower than that reported in CGA filings. In consequence, Staff could not support a margin sharing proposal based on CGA data. More generally, Staff argued that an increase in interruptible sales improves the company's load factor, reduces average costs and in turn, enhances the company's competitiveness and ultimately its profitability. Staff concluded, therefore, that EnergyNorth's normal concern for the well being of its stockholders is adequate incentive to maximize interruptible sales.

III. *Commission Analysis*

[1] The commission finds that the stipulations entered into in this proceeding strike a reasonable balance between the need for greater pricing flexibility in a competitive fuels market and the regulators duty to safeguard the interests of firm ratepayers. We therefore approve the stipulations attached hereto.

[2] The ability of a gas company to compete effectively with unregulated fuel oil suppliers is partly dependent on the degree of freedom it is given in pricing its product. Since both companies currently have the ability to discount the prices of alternate fuel suppliers the question which we need to address is whether additional flexibility is warranted. The record in this case indicates that it is and that setting prices on a customer by customer basis allows the companies to protect and expand their market shares.

[3] The stipulations' requirement that a customer's interruptible payments be equal to or greater than the marginal cost of gas supplied to the customer is another step in the direction of cost-reflective competitive pricing. The requirement has two purposes. First, it allows the companies to take full advantage of the lower cost spot purchases made during the summer months by enabling them to offer lower prices in response to competition from alternative fuel suppliers. Second, a marginal cost based minimum price, inclusive of distribution losses and the state franchise tax, benefits firm ratepayers by preventing uneconomic gas transactions. While supporting the intent of the provision we also realize that there is potential for abuse and therefore we find the condition that lower cost gas supplies be used to determine rates for firm customers and not rates for interruptible customers is appropriate.

"**[4, 5]**" The inclusion of the provision which requires each new interruptible customer to be

charged for the investment costs incurred in providing interruptible service is properly designed to insure that those customers who receive the benefits of interruptible service pay the incremental costs incurred. Although this provision may deter some potential new customers,

we believe it is both reasonable and economically desirable. Similarly, the inclusion in Northern's contracts of a $3 per month customer charge will ensure that meter reading and billing costs are borne by those customers who cause these costs to be incurred.

[6] We find that the expansion of the period of availability of interruptible gas to be an important new addition to the terms of interruptible service. Coupled with the requirement to price above marginal cost we expect this new provision will not only enhance the image of interruptible gas as an alternative to other fuels, but will also increase the dollar margin flowing to firm ratepayers. However, we caution the companies not to view this acceptance as a weakening of the commission's position on quality of service to firm ratepayers. Under no circumstances may Northern or EnergyNorth provide interruptible service during the winter peak periods when such service results in curtailment and/or higher prices to firm ratepayers.

With regard to EnergyNorth's concern about its exposure to bad debts on interruptible accounts, the commission finds the wording of the agreement acceptable and recognizes the spirit in which it was reached.

Finally, in recognition of the greater pricing flexibility that has been accorded to the companies by our acceptance of these stipulations, we impose the following reporting requirements in order to ensure that interruptible gas service is implemented in a way that does not harm firm ratepayers:

1. Pursuant to RSA 378:18 the companies will petition the commission for approval of each interruptible service contract;

2. The companies will provide a monthly report to the commission which at a minimum includes the following information on an individual customer basis;

a) the customer's alternative monthly fuel price;

b) the floor prices in the month and the effective dates;

c) the customer's actual interruptible price;

d) interruptible sales in the month by customer;

e) interruptible revenues received in the month by customer;

f) margin earned on interruptible sales per month by customer net of state franchise tax.

Our order will issue accordingly.

ORDER

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

ORDERED, that the Stipulations and Agreements entered into by the parties in this case are

approved.

By order of the Public Utilities Commission of New Hampshire this twenty-second day of September, 1988.

CONCORD NATURAL GAS
CORPORATION
GAS SERVICE, INC.
MANCHESTER GAS COMPANY

DE 88-083

INTERRUPTIBLE GAS SALES
CONTRACTS

Page 379

STIPULATION AND AGREEMENT

The Staff of the New Hampshire Public Utilities Commission ("Staff") and Concord Natural Gas Corporation, Gas Service, Inc. and Manchester Gas Company ("the Companies") hereby enter into this Stipulation and Agreement ("Stipulation"). The purpose of this Stipulation is to settle all issues having any bearing on the above-captioned proceeding. Further, it is the desire of the parties in executing this Stipulation to expedite the Public Utilities Commission's ("Commission") consideration and resolution of all issues related to this proceeding.

The following provisions constitute the full and complete agreement of the parties.

1. The Companies' pricing formula contained in contracts for interruptible sales shall be flexible allowing the Companies, subject only to the restrictions set forth below, to set a price for interruptible sales on a customer-by-customer basis. A sample contract, which Staff and the Companies agree is appropriate, is attached to this Stipulation as Appendix A and is incorporated herein by reference.

2. The posted price of a customer's alternate fuel used in the interruptible pricing formula will be that price referenced in the Platt's Oilgram Price Report rather than the Journal of Commerce Daily Petroleum prices, as was used previously.

3. The posted price of a customer's alternate fuel used in interruptible pricing formula will be determined on a monthly basis using an average of the daily posted prices for the four Fridays preceding the 25th of the month rather than as was used previously.

4. A provision shall be added to the interruptible pricing formula requiring a customer's interruptible payments to the Companies to be equal to or greater than the marginal cost of gas supplied to the customer. Included in the definition of marginal cost of gas to the customer will be a factor to cover the 1% losses incurred in delivering the gas as well as any franchise taxes. The interruptible pricing formula shall contain a minimum (floor) price equal to the marginal cost of gas supplied to the customer (determined in a manner consistent with Appendix B, attached), replacing the previously used floor price methodology.

5. All interruptible contracts shall include a provision which requires a new interruptible customer (excluding customers who currently have the ability to receive gas) to be assessed a capital contribution to cover all investment costs directly incurred in providing interruptible service to that customer, including but not limited to, any gas mains, service lines, regulators and meters.

6. When preparing all future cost of service studies, the Companies will identify all costs attributable to the interruptible class. The parties make no agreement regarding the appropriateness of such a study for purposes of designing rates.

7. To the extent that an interruptible customer wishes to make provisions for emergency service, the Companies shall enter into an agreement with the customer that allows the Companies, in their sole discretion, to provide temporary supplies of gas during emergencies related to the customer's alternate fuel equipment. The rate charged for emergency supplies shall be the non-gas component of Rate-G, plus the cost of the highest cost supply in the Companies applicable cost of gas adjustment filing adjusted for distribution losses.

8. The Staff and Companies will recommend rate case treatment and amortization of interruptible customer's bad debts. The Companies shall file a request to amortize

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this bad debt and it will exhaust all other remedies to recover the debt and state the period over which it believes amortization is appropriate. Upon commission approval of the amortization period, the companies will immediately begin amortizing the bad debt. At the time of filing a rate case, the Companies shall provide sufficient proof that the debt was prudently incurred and that the Companies are exhausting all other remedies to recover or offset the debt. The parties also recommend rate base inclusion of the tax-effected unamortized interruptible bad debt.

9. In the event that volumes of gas are made available at a lower cost than those being used to serve firm customers, and those supplies can be used for firm customers, the Companies agree that the cost of this lower cost gas will be used to determine rates for firm customers and not rates for interruptible customers.

10. It is agreed that the record on which the Commission may base its determination whether to accept this Stipulation shall consist of all data filed by the Company in support of its filing including the pre-filed testimony of Donald S. Inglis, President of the Companies, the Companies responses to Staff Data Requests, and the pre-filed testimony of Staff's Utility Analyst, George R. McCluskey.

11. If the Commission approves this Stipulation, interruptible contracts consistent with the terms of this Stipulation shall become effective twenty (20) days after filing of the contracts with this Commission unless the Commission orders otherwise. This provision does not apply to contracts that are inconsistent with this Stipulation.

12. It is agreed that this Stipulation shall not be deemed a precedent as to any matter of fact or law, nor shall it preclude any party thereto from raising any issue in any future ratemaking proceeding.

13. It is agreed that neither this Stipulation nor any part thereof shall be offered as evidence or otherwise in any other proceeding, except for the purpose of interpreting contested provisions of the Stipulation.

14. It is agreed that this Stipulation represents full agreement between all parties hereto and that rejection by the Commission of any part of this Stipulation and Agreement constitutes rejection of the whole.

15. In the event that the Commission does not approve any part of this Stipulation, the entire Stipulation shall be void and neither the Stipulation nor any part thereof shall be offered or introduced as evidence or otherwise in this or any other proceeding.

16. In the event that the Commission does not approve this Stipulation by 4:30 p.m. on October 1, 1988, all parties agree that the Stipulation will become null and void.

IN WITNESS WHEREOF, the parties have cause this Stipulation and Agreement to be duly executed in their respective names by their agents, each being fully authorized to do so on behalf of his principal.

CONCORD NATURAL GAS
CORPORATION
GAS SERVICE, INC.
MANCHESTER GAS COMPANY

By: Donald S. Inglis

STAFF OF THE PUBLIC UTILITIES
COMMISSION

By: Mary C.M. Hain

CONSUMER ADVOCATE

By: Michael Holmes

Dated: August 24, 1988

NORTHERN UTILITIES, INC.
INTERRUPTIBLE GAS SALES
CONTRACTS

DR 88-083

STIPULATION AND AGREEMENT

The Staff of the New Hampshire Public Utilities Commission (“Staff”), the Office of the Consumer Advocate, and Northern Utilities, Inc., New Hampshire Division (“Northern” or “the Company” hereby enter into this Stipulation and Agreement (“Stipulation”). The purpose of this Stipulation is to settle all issues having any bearing on the above-captioned proceeding. Stipulation to expedite the Public Utilities Commission's (“Commission”) consideration and resolution of all issues related to this proceeding.

The following provisions constitute the full and complete agreement of the parties.

1. Northern's pricing formula contained in contracts for interruptible sales shall be flexible allowing Northern to set a price for interruptible sales on a customer-by-customer basis subject only to the restrictions set forth below. A sample contract, which Staff and Northern agree is appropriate, is attached to this Stipulation as Appendix A and is incorporated herein by reference.

2. The posted price of a customer's alternate fuel used in interruptible pricing formula will be that price referenced in the Platt's Oilgram Price Report (See Appendix B) rather than the Journal of Commerce Daily Petroleum prices (See Appendix C), as was used previously.

3. The posted price of a customer's alternate fuel used in interruptible pricing formula will be determined on a monthly basis using an average of the daily posted prices (See Appendix A) rather than the posted prices for the first four Mondays in a month as was used previously. However, the actual interruptible gas price to a Customer may vary on a weekly or daily basis.

4. A provision shall be added to the interruptible pricing formula to permit a customer to pay a premium to Northern to ensure that the price a customer pays for interruptible gas is always greater than the marginal cost of gas supplied to the customer. Included in the definition of the marginal cost of gas to the Customer will be a factor to cover the distribution system losses incurred in delivery of the gas as well as any franchise taxes. The interruptible pricing formula shall contain a minimum (floor) price equal to the marginal cost of the gas supplied to the Customer, replacing the previously used floor price which equaled the commodity cost of pipeline gas purchased from Granite State Gas Transmission, Inc. plus $0.10/MCF. (See Appendix A).

5. The interruptible pricing formula will reflect a variable heating value which reflects the Btu content of the gas delivered to the customer, replacing a constant heating value which was used previously. (See Appendix A).

6. Except for a twelve (12) month transition period for existing customers all interruptible contract prices shall reflect a $3 per month customer charge per meter (to recover meter reading and billing costs) to be billed to a customer only in months in which interruptible sales are made to that customer.

7. All interruptible contracts with new Customers shall require the new interruptible customers (excluding customers who presently have the ability to receive gas) to be assessed a capital contribution to recover all investment costs directly

incurred in providing interruptible service to that customer, including but not limited to any gas mains, service lines, regulators, and meters. Existing customers shall be assessed a similar capital contribution to recover said investment costs incurred in providing for an expansion of the existing interruptible service.

8. When preparing all future cost of service studies, Northern will identify all non-gas costs attributable to the interruptible class. The parties make no agreement regarding the appropriateness of such a study for purposes of designing rates.

9. To the extent that an existing or new interruptible customer wishes to make provisions for emergency service, Northern shall in its sole discretion enter into an agreement with the customer that allows Northern to provide temporary supplies of gas during emergencies related to the customer's alternate fuel equipment. The rate charged for emergency supplies shall be the non-gas component of Rate-G plus the cost of the highest cost supply in the company's applicable cost of gas adjustment filing, adjusted for system losses.

10. When Northern reports to the Commission on the net revenue effect of interruptible sales, Northern will explicitly recognize an appropriate amount of New Hampshire franchise tax taxes as a deduction from total interruptible gross margin.

11. In the event that volumes of gas are made available at a lower cost than those being used to serve firm customers and those supplies can be used for firm customers, Northern agrees that the cost of this lower cost gas will be used to determine rates for firm customers and not rates for interruptible customers.

12. If the Commission approves this Stipulation, interruptible contracts consistent with the terms of this Stipulation shall become effective twenty (20) days after filing of the contracts with this Commission unless the Commission orders otherwise. This provision does not apply to contracts that are not consistent with this Stipulation.

13. It is agreed that the record on which the Commission may base its determination whether to accept this Stipulation shall consist of all data filed by the Company in support of its filing, including the pre-filed testimony of Charles T. Ellis, Vice President of Northern, Northern's responses to Staff Data Requests, and the pre-filed testimony of Staff's Utility Analyst, George R. McCluskey.

14. It is agreed that this Stipulation shall not be deemed a precedent as to any matter of fact or law, nor shall it preclude any party thereto from raising any issue in any future ratemaking proceeding.

15. It is agreed that neither this Stipulation nor any part thereof shall be offered as evidence or otherwise in any other proceeding except for purposes of interpreting contested provisions of this Stipulation.

16. It is agreed that this Stipulation represents full agreement between all parties hereto and that rejection by the Commission of any part of this Stipulation and Agreement constitutes rejection of the whole.

17. In the event that the Commission does not approve any part of this Stipulation, the entire Stipulation shall be void and neither the Stipulation nor any part thereof shall be offered or

introduced as evidence or otherwise in this or any other proceeding.

18. In the event that the Commission does not approve this Stipulation by 4:30 p.m. on October 1, 1988, all parties agree that the Stipulation will become null and void.

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Northern Utilities, Inc.
by Elias. G. Farrah, Esquire

Consumer Advocate
by Michael Holmes, Esquire

Staff of N.H. Public Utilities Commission
by Mary C.M. Hain, Esquire

August 24, 1988

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NH.PUC*09/22/88*[52053]*73 NH PUC 384*Small Energy Producers and Cogenerators

[Go to End of 52053]

73 NH PUC 384

Re Small Energy Producers and Cogenerators

DR 88-107
Order No. 19,182

New Hampshire Public Utilities Commission

September 22, 1988

ORDER establishing procedural matters, including intervention, procedural schedule, and identification of major issues, for purposes of a proceeding to determine whether an electric utility implemented required procedures to calculate and update its peak reduction factor.

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1. COGENERATION, § 1 — Generally — Procedure — Peak reduction factor.

[N.H.] A schedule was established for a proceeding to determine whether an electric utility had correctly calculated and updated its peak reduction factor. p. 385.

2. PARTIES, § 18 — Interveners — Discretionary intervention — Grounds for granting.

[N.H.] Certain qualifying cogeneration and small power production facilities (QFs) were permitted to intervene in a proceeding concerning whether an electric utility had implemented required procedures to calculate and update its peak reduction factor (which was designed to

adjust the price paid by the utility to QFs in accordance with the amount of actual peak load reduction of an individual or class of QFs, to maximize their contribution at the time of the utility's system peak load), because the movants were all QFs potentially affected by the outcome of the proceeding, and because the commission determined that the discretionary interventions would be in the interest of justice and would not impair the orderly and prompt conduct of the proceedings. p. 385.

3. PROCEDURE, § 39 — Time limitations — Procedural schedule — Stipulation by parties — Grounds for approval.

[N.H.] A stipulated procedural schedule was reasonable and therefore adopted for purposes of a proceeding concerning whether an electric utility had implemented required procedures to calculate and update its peak reduction factor (which was designed to adjust the price paid by the utility to QFs in accordance with the amount of actual peak load reduction of an individual QF or class of QFs, to maximize the contribution of QFs at the time of the utility's system peak load), because the schedule appeared to allow all concerned parties adequate time to prepare for the proceedings, and also took into consideration the requirements of the commission calendar. p. 385.

4. PROCEDURE, § 31 — Disposal of issues; decision — Stipulations by parties — Effect of stipulation — Other pertinent issues.

[N.H.] For purposes of a proceeding to determine whether an electric utility had implemented required procedures to calculate and update its peak reduction factor, the commission accepted issues as stipulated, without limitation, by the parties; however, in doing so, the commission did not intend to preclude itself or the parties from addressing any other pertinent issues that might arise during the course of the proceedings. p. 386.

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APPEARANCES: Attorney Thomas Getz for Public Service Company of New Hampshire; Attorney Martin C. Rothfelder for the New Hampshire Public Utilities Commission; Attorney Joseph Rogers for the Office of the Consumer Advocate; and Attorney Robert Olson for Pinetree Power, Inc., Pinetree Power-Tamworth, Inc., Whitefield Power and Light Co., Alexandria Power Assoc., Bridgewater Power Co., Timco, Inc. and Hemphill Power and Light Co.

By the COMMISSION:

REPORT REGARDING
PREHEARING CONFERENCE
OF SEPTEMBER 7, 1988

[1] This docket was opened on the motion of the commission by order of notice dated August 10, 1988. This order addresses such procedural matters as intervention, procedural schedule and identification of major issues.

The commission opened this docket on being advised by its staff that the Public Service

Company of New Hampshire (PSNH) has not implemented the procedures for calculating and updating the Peak Reduction Factor pursuant to *Re Small Energy Producers and Cogenerators,* docket no. DE 83-62, 69 NH PUC 352, 61 PUR4th 132 (1984) and progeny. The amount paid by PSNH to a qualifying small power producer or qualifying cogenerator (QFs) for capacity, pursuant to the above cited cases, is the product of the capacity rate component multiplied by the commission's audit value multiplied in turn by the peak reduction factor. The peak reduction factor is designed to adjust the price paid by PSNH to the QFs in accordance with the amount of actual peak load reduction of an individual QF or class of QFs. To accomplish this aim, the commission, in DE 88-62 and progeny, established certain procedures for the proper calculation to update the peak reduction factor to maximize the contribution of QFs at the time of PSNH's system peak load.

On July 22, 1988, the commission was advised by its staff that PSNH is apparently not implementing the above cited procedures for calculating and updating the peak reduction factor and, accordingly, issued the order of notice dated August 10, 1988, opening this docket.

INTERVENTION

[2] Pinetree Power, Inc., Pinetree Power Tamworth, Inc., Whitefield Power and Light Co., Alexandria Power Assoc., Bridgewater Power Co., Timco, Inc. and Hempfield Power and Light Co. requested discretionary intervention pursuant to RSA 541-a:17 II at the prehearing conference on September 7, 1988. The movants are all QFs that are potentially affected by the outcome of the proceedings. There having been no objection to the requested interventions, the commission determines that such interventions would be in the interest of justice and would not impair the orderly and prompt conduct of the proceedings.

PROPOSED PROCEDURAL SCHEDULE

[3] The hearing examiner recessed the proceedings to allow the parties an opportunity to discuss procedural schedules and narrowing of issues. After conferring, the parties presented the following stipulated procedural schedule for commission consideration:

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

October 6, 1988	PSNH prefiled testimony and exhibits due.
October 13, 1988	Staff and intervenor data requests due.
October 20, 1988	PSNH responses to staff and intervenor data requests due.
November 3, 1988	Intervenor prefiled testimony and exhibits due.
November 10, 1988	Staff prefiled testimony and exhibits due.
December 1 & 2, 1988	Hearing on the merits.

The proposed schedule appears to allow all concerned parties adequate time to prepare for the proceedings. It also takes into consideration the requirements of the commission calendar. Accordingly, we find that the proposed schedule is reasonable and will adopt it for purposes of these proceedings.

NARROWING OF ISSUES

[4] The commission's general counsel advised the commission that the parties stipulated, without limitation, to the following five issues:

1. PSNH efforts to implement the requirements of DE 83-62 and progeny regarding QF peak reduction factor.

2.The PSNH interpretation of commission orders in said dockets.

3. If PSNH has not implemented the requirements in said orders PSNH shall delineate the affect on ratepayers and QFs of said failure to implement.

4. Any changes needed to the peak reduction factor methodology.

5. What, if any, retroactive adjustment should be made if PSNH in fact failed to implement to the above cited orders.

The above five issues fall within the intent of the commission in establishing this docket and is a reasonable attempt to identify the issues before us. However, in accepting the issues as stipulated by the parties the commission does not intend to limit ourselves or the parties from addressing any other pertinent issues which may arise during the course of the proceedings. In addition, PSNH shall address each of the above in its prefiled testimony filed October 6 as was discussed on the record in this proceeding.

Our order will issue accordingly.

ORDER

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

ORDERED, that the motions for discretionary intervention pursuant to RSA 541-a:17 II for Pinetree Power, Inc., Pinetree Power-Tamworth, Inc., Whitefield Power and Light Co., Alexandria Power Assoc., Bridgewater Power Co., Timco, Inc. and Hemphill Power and Light Co. are granted; it is

FURTHER ORDERED, that the procedural schedule stipulated to by the parties and set forth in the foregoing report is accepted by the commission for purposes of these proceedings; it is

FURTHER ORDERED, that the aforedescribed issues to be addressed in these proceedings are adopted by the commission without limitation.

By order of the Public Utilities Commission of New Hampshire this twenty-second day of September, 1988.

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NH.PUC*09/27/88*[52054]*73 NH PUC 387*New England Telephone Company

[Go to End of 52054]

73 NH PUC 387

Re New England Telephone Company

DR 88-129
Order No. 19,184

New Hampshire Public Utilities Commission

September 27, 1988

ORDER authorizing a local exchange telephone carrier to detariff and offer, on an unbundled, structurally unseparated basis, an enhanced service providing accounts codes capability.

SERVICE, § 433 — Telephone — Enhanced service — Accounts codes capability — Customer dialed account recording.

[N.H.] A local exchange telephone carrier was authorized to offer a service enabling end users to assign, for accounting or tracking purposes, numerical codes to each outgoing telephone call, because the accounts codes capability of station message detail recording to premises functioned as an enhanced telephone service in much the same way as customer dialed account recording, which the Federal Communications Commission found was an enhanced service that must be detariffed and offered on an unbundled, structurally unseparated basis.

By the COMMISSION:

ORDER

WHEREAS, on September 1, 1988 New England Telephone Company (NET) filed with the commission its NHPUC — No. 75, Part A, Section 7, Seventh Revision of Pages 46, 52, 54, 57 and 67 with a proposed effective date of October 1, 1988; and

WHEREAS, the offering enables the end user to assign, for accounting or tracking purposes, numerical codes to each outgoing telephone call; and

WHEREAS, the above filing is offered in compliance with the Federal Communications Commission's (FCC's) Memorandum and Opinion and Order, adopted June 28, 1988 and released July 21, 1988 affirming that Customer Dialed Account Recording (CDAR) is an enhanced service and therefore to be detariffed and offered on an unbundled, structurally unseparated basis by October 1, 1988; and

WHEREAS, the Account Codes capability of Station Message Detail Recording to Premises (SMDR-P) functions as an enhanced service in much the same way as CDAR; and

WHEREAS, only four customers receive CDAR in conjunction with Centrex and these customers will continue to receive CDAR on a detariffed basis; and

WHEREAS, NET has requested that Chapter Puc 1603 Tariff Filing Requirements be waived; it is hereby

ORDERED, that CDAR and the Accounts Code capability only of Station Message Detail Recording to Premises (SMDR-P) be detariffed and offered on an unbundled, structurally unseparated basis; and it is

FURTHER ORDERED, that NET's NHPUC No. 75, Part A, Section 7, Seventh Revisions of Pages 46, 52, 54, 57, and 67, are hereby accepted, superseding the Sixth Revisions of said Pages; and it is

FURTHER ORDERED, that the requirements of Puc Chapter 1603 be waived; and it is

FURTHER ORDERED, that each of the above tariff pages be resubmitted as a compliance tariff with the following annotation "Authorized by NHPUC Order No. 19,184 in case no. DR 88-129, dated September 27, 1988."

By order of the Public Utilities Commission of New Hampshire this twenty-seventh day of September, 1988.

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NH.PUC*09/27/88*[52055]*73 NH PUC 388*Granite State Telephone Company

[Go to End of 52055]

73 NH PUC 388

Re Granite State Telephone Company

DF 88-095
Order No. 19,186

New Hampshire Public Utilities Commission

September 27, 1988

ORDER authorizing issuance of mortgage note.

SECURITY ISSUES, § 44 — Factors affecting authorization — Low-cost financing — Equity-to-debt ratio — Financial prospects.

[N.H.] A telephone utility was authorized to issue a $2.5 million low-interest rate mortgage note acting through the Rural Electrification Administration; nevertheless, because the utility had a low equity-to-debt ratio, the commission stated that it would monitor the equity and debt relationship and if the situation did not improve, it would expect some equity infusions prior to further debt financings, however low the debt cost rates.

APPEARANCES: Granite State Telephone by Frederick Coolbroth, Esq.; NHPUC Staff by Eugene F. Sullivan and Dr. Sarah P. Voll

By the COMMISSION:

REPORT

On July 1, 1988, Granite State Telephone Company (Granite or Company) filed a petition for authority to issue a $2,500,000 mortgage note to the United States of America, acting through the Rural Electrification Administration (REA). Pursuant to an order of notice issued August 2, 1988, the Company prefiled the testimony of William R. Stafford, Vice President — Administration, and Otto M. Nielson, Comptroller, on August 5, 1988. A hearing was held on August 25, 1988.

The Company described the financing, labelled the “P loan”, as a mortgage note to the REA in the principal amount of $2,500,000, payable over 35 years with interest at the rate of 5% per annum. The terms of the loan provide for principal payments beginning three years after the date of the note on amounts borrowed during that three year period. On amounts borrowed during the subsequent three years, principal payments will start in the seventh year. As part of the financing the Company proposed to enter into a restated mortgage and security agreement covering substantially all of the Company's property. The Company will also rescind the unused portion of the previous “N loan” from the REA in the amount of $754,000, which had been issued with an interest rate of 10% per annum. There is no “O loan”.

The loan will provide partial funding for a five year construction program (1988-1992) in the amount of $6,271,700, of which $70,000 represents a manhole/ conduit project that was originally planned to be financed by the “N loan”. Granite testified that the difference between the $6,271,700 construction project and the $2,500,000 loan will be met through depreciation ($3,215,654) and retained earnings ($556,046) during the five year period.

The Company witnesses assert that the construction program has been dictated by the Company's efforts to keep pace with new technology and its high rate of customer growth. The program includes a joint venture with Contel of New Hampshire, Inc. to construct a fibre optic inter-exchange facility between the Hillsboro Upper Valley exchange and the Weare office to provide route diversity for the Hillsboro Upper Village and Washington traffic. It will also fund the expansion or replacement of the ITT 1210 digital switch in the Weare exchange.

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The Company avers that this financing is consistent with the public good in that it combines internally generated funds and a 5% REA loan to fund a substantial construction program. Its witnesses point out that the 5% loan is below the Company's embedded cost of debt (5.67%) and considerably less than the 11.48% return recently granted on common equity.

The commission agrees that Granite's financing program, and the instant mortgage note proposal, is inexpensive and therefore consistent with the public good. We will therefore authorize the Company to issue the mortgage note to the REA on the above described terms.

The commission continues to note its concern regarding the Company's low equity/debt ratio.

The Company's exhibits indicate that its capitalization ratio at December 31, 1987 was 15.25% equity and 84.75% debt and that this ratio changes to 17.64% equity/82.36% to debt by the end of the construction period (1992). However, the immediate effect of an infusion of $2.5 million of debt into the 1987 capital structure is to worsen the ratio to 11.71%/88.29%. Further, the improvement in the capitalization ratio by 1992 depends on the presumed availability of $556,046 of retained earnings, a figure that was derived as a residual, being the difference between the amount of the construction program and the funds available from depreciation and the REA. It is not calculated as a result of an analysis of projected earnings, including toll settlements and added customers, and projected expenses. We also note that the Company's low equity/debt ratio results in part from the 1987 dividend of $285,563 in contrast to a 1987 net income of $33,421. The Company has assured us in its data response received September 6, 1988 that $111,000 of the dividend constituted a non-recurring distribution to Karlin Acquisition Corporation of an account receivable from Granite State Teletron. The balance was declared and paid by the Company prior to its becoming aware of an error in its toll settlements that required a substantial refund. Therefore, the Company anticipates that its annual dividend declarations will be substantially less than $285,000 during each of the years in the five year forecast.

Thus, while we find the instant financing to be consistent with the public good, we find the remaining components of the Company's financing plan somewhat conjectural and dependent on the continued economic growth and prosperity of the Company's franchise area. Given the financial risks associated with the Company's low equity/debt ratio, this is a fragile foundation for major expansion. We will monitor the Company's equity/debt during the forecast period and in particular its relationship to its dividend payout policy. If the equity/debt ratio does not improve, we will expect to see some equity infusions prior to further debt financings, however low the cost rates.

Our order will issue accordingly.

ORDER

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

ORDERED, that the applicant, Granite State Telephone Company be, and hereby is, authorized to issue a $2,500,000 mortgage note to the United States of America, acting through the Rural Electrification Administration (REA) payable over 35 years with an annual rate of interest of 5%; and it is

FURTHER ORDERED, that the proceeds of the issuance of the said note shall be used to partially fund the Company's

$6,271,700 construction program with the remainder being provided through internally generated funds; and it is

FURTHER ORDERED, that Granite State Telephone Company may enter into a restated mortgage and security agreement such that all of its property is mortgaged as security for all outstanding notes to the REA and the Rural Telephone Bank; and it is

FURTHER ORDERED, that finalized copies of the mortgage note and the restated mortgage

and security agreement and the resolution of the Board of Directors be filed with the commission; and it is

FURTHER ORDERED, that on January 1st and July 1st of each year Granite State Telephone Company shall file with this commission, a detailed statement, duly sworn to by its Treasurer, showing the disposition of proceeds of said note 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 twenty-seventh day of September, 1988.

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NH.PUC*09/28/88*[52056]*73 NH PUC 390*New England Telephone and Telegraph Company, Inc.

[Go to End of 52056]

73 NH PUC 390

Re New England Telephone and Telegraph Company, Inc.

DC 88-135
Order No. 19,188

New Hampshire Public Utilities Commission

September 28, 1988

ORDER authorizing marketing of white page subscriber directory listing.

SERVICE, § 434 — Telephone directories — White page listings — Marketing — To third parties.

[N.H.] A local exchange carrier was authorized to market its white page subscriber directory listing to third parties subject to the following conditions: (1) only such information (name, address, and telephone number) shall be provided that is published or available through directory assistance, excluding all information for subscribers with unlisted or unpublished numbers and excluding all information for subscribers requesting not to be on such lists; (2) the listings may be sorted only on the basis of name, address and telephone number and that data may not be made available on any other basis (such as occupation, area code, new listing, transaction code or gender) without prior review and commission authorization; and (3) printed notice shall be given that customers may exclude themselves from such lists.

By the COMMISSION:

ORDER

WHEREAS, on September 1, 1988 New England Telephone and Telegraph Company, Inc. (NET) informed the commission of NET's intent to significantly expand its marketing of white pages directory listings by contract; and

WHEREAS, since before divestiture NET has provided names, addresses and telephone numbers of listed subscribers to independent publishers for the purpose of producing printed and electronic directories or for some non-publishing purposes on a case-by-case basis; and

WHEREAS, the company has decided to change its policy and proactively market the provision of listings; and

WHEREAS, the revenues from such marketing efforts will contribute towards the public good by diminishing the revenue burden on basic local rates; it is hereby

ORDERED, that NET be, and hereby is, authorized to expand its marketing of white page subscriber directory listing to third parties effective as of the date of this order; and it is

FURTHER ORDERED, that such authorization shall be to provide only that

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information (name, address, and telephone number) that is published or available through directory assistance and shall exclude all information for subscribers who have unlisted or unpublished numbers and shall also exclude all information for subscribers who either by mail or orally request to be excluded from said lists; and it is

FURTHER ORDERED, that such white page directory listings may be sorted only on the basis of name, address and telephone number and that data shall not be made available on any other basis (e.g. information obtained from the customer including but not limited to occupation, area code, new listing, transaction code or gender) without prior review and authorization by the commission; and it is

FURTHER ORDERED, that printed notice shall be given in NET's directory, and in two monthly billings, specifying in each of said monthly billings that NET customers may exclude themselves from said lists; and it is

FURTHER ORDERED, that current NET customers shall have not fewer than thirty days from the date of the second billing to respond to NET as to whether they wish to be excluded from said lists; and it is

FURTHER ORDERED, that every new NET customer shall be advised at the time of the initial service order of their right to keep such information out of lists provided to third parties and shall have no fewer than thirty days in which to request exclusion from said lists; and it is

FURTHER ORDERED, that NET shall submit clear and specific guidelines to the commission for review on data dissemination to third parties; and it is

FURTHER ORDERED, that NET will also submit, on a quarterly basis the names and addresses of third parties purchasing customer listing services as well as types of information sorts requested by each; and it is

FURTHER ORDERED, that NET submit a list of the types of customer specific data

collected during the course of providing service and provide the formats of such data base(s) within thirty (30) days of this order and continue to do so as the customer listing data base(s), or their organization, change; and it is

FURTHER ORDERED, that NET compile monthly, and submit to the Commission on a quarterly basis, the costs of collecting and processing data to compile and offer such white page directory lists for sale; and it is

FURTHER ORDERED, that NET compile monthly, and submit to the Commission on a quarterly basis, the revenues resulting from the sale of white pages directory listings separated from other directory revenues.

By order of the Public Utilities Commission of New Hampshire this twenty-eighth day of September, 1988.

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NH.PUC*09/28/88*[52057]*73 NH PUC 391*Manchester Water Works

[Go to End of 52057]

73 NH PUC 391

Re Manchester Water Works

Additional party: Southern New Hampshire Water Company, Inc.

DE 88-133
Order No. 19,189

New Hampshire Public Utilities Commission

September 28, 1988

ORDER nisi authorizing adjustment of certain franchise boundaries.

MONOPOLY AND COMPETITION, § 28 — Division of territory — Franchise boundary adjustment — Water utilities.

[N.H.] Two water utilities were authorized to adjust certain franchise boundaries in a municipality because the municipality's water

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commissioners had voted affirmatively to support the franchise adjustment and because the commission was satisfied that such action was in the public good.

By the COMMISSION:

ORDER

WHEREAS, Manchester Water Works (Manchester) and Southern New Hampshire Water Company Inc. (Southern), utilities operating under the jurisdiction of this commission, by petitions filed September 7, 1988, seek authority under RSA 374:22, 26, and 28 as amended, to adjust certain franchise boundaries in the town of Londonderry; and

WHEREAS, in its petition Manchester requests that certain portions of its existing franchise territory in northern Londonderry be withdrawn from its present franchise and that Southern be authorized to include those areas in its franchise; and

WHEREAS, in its petition Southern requests authority to serve the areas relinquished by Manchester and also to serve a certain unfranchised area of Londonderry that lies between the existing Manchester and Southern franchises; and

WHEREAS, Manchester currently does not render service in the area here described; and

WHEREAS, Southern will apply its currently effective Londonderry rates to prospective customers in the area to be served; and

WHEREAS, the Londonderry Water Commissioners have voted affirmatively to support the franchise adjustment; 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 11, 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 October 5, 1988 and designated in an affidavit to be made on a copy of this order and filed with this office on or before October 18, 1988; and it is

FURTHER ORDERED, NISI, that Manchester Water Works, is hereby authorized pursuant to RSA 374:28, to discontinue operating as a public utility and that Southern New Hampshire Water Company Inc. is hereby authorized pursuant to RSA 374:22 and 26 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, effective October 18, 1988 unless a hearing is requested as provided herein or the Commission directs otherwise prior to that date.

Beginning at a point on the boundary between the City of Manchester and the Town of Londonderry in northwest Londonderry on the northerly side of Litchfield Road; thence northerly along the Manchester/Londonderry boundary to the northwest corner of Lot No. P/O 11-9 on the Tax Map of the Town of Londonderry; thence easterly along the northerly lot line of Lot No. P/O 11-9 to a point in the westerly side of Lot P/O

11-10; thence northerly along the westerly boundary of Lot P/O 11-10 to the northwest corner of said lot; thence easterly along the northerly lot line of Lot P/O 11-10 to the northwesterly corner of Lot P/0 11-12; thence along the northerly boundary of Lot P/O 11-12 to a point in the westerly boundary of lot 39; thence easterly following the same course as the northerly boundary of Lot 10-12 to a point in the easterly boundary of Lot 39; thence southerly along the easterly boundary of Lot 39 to the northwesterly corner of Lot 44-3; thence easterly along the northerly boundary of Lot 44-3 to its northeasterly corner; thence southerly along the easterly boundary of Lot 44-3 to a point on the north side of the said Litchfield Road; thence easterly along the north side of the said Litchfield Road to the southwesterly corner of Lot 44-9; thence northerly along the westerly boundary of Lot 44-9 to its northwesterly corner; thence easterly along the northerly boundary of Lot 44-9 to the northwesterly corner of Lot 44-10; thence in a generally southeasterly direction along the boundary of Lot 44-10 to a point where it meets Lot 23; thence easterly along the northerly boundary of Lot 23 to a point which marks the intersection of Lots 23, 98, 100 and 101; thence northerly along the westerly boundary of Lots 100 and 101 to the northwesterly corner of said Lots 100 and 101; thence easterly along the northern boundary of said Lots 100 and 101 to a point; thence in a northwesterly direction approximately 340° to the southwesterly corner of Lot 41; thence northerly along the westerly boundary of Lot 41 to its juncture with Lot 42-1; thence westerly along the southerly boundary of Lot 42-1 to its southwesterly corner; thence northerly along the westerly boundary of Lot 42-1 to the southwesterly corner of Lot 42; thence northerly along the westerly boundary of Lot 42 to its northwest corner; thence easterly along the northerly boundary of lot 42 to the southwesterly corner of Lot 43; thence northerly along the easterly boundary of Lot 43 to its northwesterly corner; thence westerly along the southerly boundary of Lot 44-4 to its southwesterly corner; thence northerly along the westerly boundary of Lot 44-4 to its northwesterly corner; thence easterly along the northerly boundary of Lot 44-4 to its northeasterly corner; thence easterly across Harvey Road to the northwest corner of Lot 29-2; thence easterly along the northerly boundary of Lot 29-2 to its northeast corner; thence southerly along the easterly boundary of Lot 29-2 and across Lot 29 to a point on the northern boundary of Lot 29-1; thence easterly along the northerly boundary of Lot 29-1 to its northeasterly corner; thence southerly along the easterly boundary of Lot 29-1 to a point in the northerly boundary of Lot 31-1; thence westerly along the northerly boundary of Lot 31-1 to its northwesterly boundary which is also the northeasterly corner of Lot 31; thence southerly along the easterly boundary of Lot 31 to the northeasterly boundary of Lot 32 which is also the point where Lot 31 and 31-1 meet Lot 32; thence easterly along the northerly boundary of Lot 32 which is also the southern boundary of Lot 31-1 to the northeasterly corner of Lot 32; thence southerly along the easterly boundary of Lot 32 to the northeast corner of Lot 102; thence easterly along the northerly boundary of Lots 112 and 113 to a

southwesterly corner of Lot 33; thence northerly along the northwesterly boundary of Lot 33 to its northwesterly corner; thence easterly along the northern boundary of Lot 33 to its northeastern corner; thence easterly across Hall Road to the Northeasterly corner of Lot 111; thence southerly along the easterly boundary of Lot 111 to its southeasterly corner; thence easterly along the southerly boundary of Lot 14 to its southeasterly corner; thence northerly along the easterly boundary of Lot 14 to the southwesterly corner of Lot 13; thence easterly along the boundary of Lot 13 and an extension thereof across Lot 145 to a point of the southerly boundary of Lot 6 which is also the northwesterly corner of Lot 16; thence northeasterly following the course of Little Cohas Brook and along the northwesterly boundaries of Lots 16, 18, 17 and 131 to a point in the southerly boundary of Lot 134; thence in a generally northeasterly direction across the extreme southeasterly corner of Lot 134 to the intersection of Lots 134, 132 and 133; thence easterly on the northerly boundary of Lot 132 which is also the southern boundary of Lot 133 to a point in the westerly side of Mammoth Road; thence southerly on the westerly side of Mammoth Road to the intersection of Rockingham Road; thence easterly on the southerly side of Rockingham Road and along the northerly boundary of Lot 128 to its northeasterly corner; thence southerly along the westerly boundary of Lot 127 to its southwesterly corner; thence easterly along the southerly boundary of Lot 127 to its southeasterly corner; thence southerly on the easterly boundaries of Lots 127, 128, 130, 114, 115, 116, 117, and 118 to a point in the northerly boundary of Lot 119; thence easterly along the northerly boundary of Lot 119 to its northeast corner; thence southerly along the easterly boundaries of Lots 119 and 120 to the southeast corner of Lot 120; thence westerly along the southerly boundary of Lot 120 to the northeast corner of Lot 121; thence southerly along the easterly boundaries of Lots 121 and 122 to the northeast corner of Lot 85; thence easterly along the northerly boundaries of Lots 85-10, 83-8, 83-9, 83-10, 83-11, 83-12, and 46 to a point in the westerly side of Noyes Road; thence easterly across Noyes Road to the northwest corner of Lot 45; thence easterly along the northerly boundary of Lot 45 to the northeast boundary of Lot 45; thence southerly along the easterly boundaries of Lots 45, 48 and 88 to the northwest corner of Lot P/O 15-49; thence easterly along the northerly boundary of Lot P/O 15-49 to a point in the westerly side of Perkins Road; thence across Perkins Road to the northwest corner of Lot 25; thence easterly along the northerly boundary of Lot 25 to the northwest corner of Lot 25-12;*(36) thence easterly along the northerly boundary of Lot 25-12 to the easterly side of Interstate 93; thence southerly along the westerly side of Interstate 93 to the northerly side of Litchfield Road; thence westerly along the northerly side of Stonehenge and Litchfield Roads to the point of beginning.

By order of the Public Utilities Commission of New Hampshire this twenty-eighth day of September, 1988.

FOOTNOTES

*As corrected by Supplemental Order No. 19,248, November 30, 1988.

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NH.PUC*09/29/88*[52058]*73 NH PUC 395*Granite State Electric Company

[Go to End of 52058]

73 NH PUC 395

Re Granite State Electric Company

DF 88-137
Order No. 19,190

New Hampshire Public Utilities Commission

September 29, 1988

ORDER approving electric utility customer refund.

REPARATION, § 15 — Grounds for allowing or disallowing — Amortization period change — Electric.

[N.H.] An electric utility was authorized to make a refund to its customers of its share of another utility's refund resulting from a Federal Energy Regulatory Commission order requiring the second utility to amortize its investment in the Seabrook Unit 2 over a ten-year period, rather than the five-year period originally proposed.

By the COMMISSION:

ORDER

WHEREAS, Granite State Electric Co. filed with this commission on September 9, 1988 a proposed refund to its customers in the amount of $1,037,160; and

WHEREAS, said refund results from a Federal Energy Regulatory Commission order issued on January 15, 1988 that required New England Power Company (NEP) to amortize its investment in the Seabrook Unit 2 over a ten year period, rather than the five year period which NEP had originally proposed and collected for as part of its wholesale rate; and

WHEREAS, Granite State Electric Co.'s share of NEP's refund was $984,679.79 including interest; and

WHEREAS, Granite State Electric Co. submitted a calculation of additional interest on the proposed refund which will accrue over the repayment period; and

WHEREAS, Granite State Electric Co. proposes to refund $1,037,160 to its customers via a billing refund factor of $.00171 per kWh, to be credited to applicable kWh sales during the proposed twelve month refund period; and

WHEREAS, based on an examination of the components of the calculation of refund for Seabrook II, this commission is satisfied that the refund of $1,037,160 constitutes the whole refund obligation due Granite State Electric Co. customers; and

WHEREAS, Granite State Electric Co. states that the refund procedure inter alia, is scheduled to start with the first billing cycle of October 1988 and run through the last cycle of September 1989; it is therefore

ORDERED, that Granite State Electric Co. requested refund of $1,037,160 ($.00171 per kWh) be, and hereby is approved; and it is

FURTHER ORDERED, that Granite State Electric Co. file tariff pages reflecting the above approved rate; and it is

FURTHER ORDERED, that Granite State Electric Co. shall upon completion of this refund furnish this commission a detailed accounting of refunds actually made.

By Order of the Public Utilities Commission of New Hampshire this twenty-ninth day of September, 1988.

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NH.PUC*10/03/88*[52059]*73 NH PUC 395*Link-Up New Hampshire

[Go to End of 52059]

73 NH PUC 395

Re Link-Up New Hampshire

DE 88-012
Order No. 19,192

New Hampshire Public Utilities Commission

October 3, 1988

ORDER establishing Link-Up New Hampshire program, designed to help low-income households obtain telephone service.

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1. RATES, § 309 — Telephone connections — Link-Up New Hampshire — Low-income assistance program.

[N.H.] The Link-Up New Hampshire Plan implements Federal Communications Commission recommendations and is comprised of the following two major components: (1) it provides federal assistance to cover one-half of the telephone connection charges, up to $30, for eligible low-income beneficiaries; and (2) where service connection charges are greater than $30, and where a local exchange carrier offers a deferred payments plan for service connection

charges, for a period of twelve months or less, federal assistance is available to the carrier to cover the interest on deferred costs of up to $200. p. 400.

2. SERVICE, § 459 — Telephone — Link-Up America — Criteria for program eligibility.

[N.H.] Eligibility for the Link-Up America Plan is conditional on satisfying the following federal criteria: (1) the customer must have lived at an address where there had been no telephone service for at least three months prior to the date Link-Up assistance is requested; (2) the customer must not have received Link-Up assistance within the last two years; (3) the customer must not be dependent for federal income tax purposes, unless he or she is more than 60 years of age; and (4) the customer must meet the requirements of a state-established means test. p. 400.

3. EXPENSES, § 140 — Telephone — Link-Up New Hampshire — Connection assistance — Expense adjustment.

[N.H.] Link-Up New Hampshire will not require either intrastate funding mechanisms or local rate increases, because the Federal Communications Commission (FCC) has authorized an expense adjustment for lifeline connection assistance, which will enable exchange carriers certified by the FCC to make an additional assignment of expenses to the interstate jurisdiction from the intrastate jurisdiction; assignable expenses are those associated with reduced charges for connection of a single line telephone for a residential subscriber and the interest expense associated with deferred payment of connection charges. p. 400.

4. SERVICE, § 459 — Telephone — Link-Up New Hampshire — Plan eligibility — Unemployment benefits.

[N.H.] Recipients of unemployment compensation benefits are not eligible to participate in the Link-Up New Hampshire plan, because the majority of the recipients are already covered under existing assistance programs; however, in the event of an economic downturn of the state economy, the issue may be revisited. p. 400.

5. RATES, § 309 — Telephone connections — Link-Up New Hampshire — Low-income assistance program.

[N.H.] The enactment of the Link-Up New Hampshire plan was found to be in the public interest because it will overcome the primary barrier to telephone subscribership among low-income households, which is high initial service installation and connection charges; current subscribers will also benefit because increasing the size of the network increases the utility of phone service for all customers and helps approach the goal of universal service. p. 401.

6. RATES, § 309 — Telephone connections — Link-Up America — Universal service — Low-income households.

[N.H.] The Federal Communications Commission (FCC) adopted a two-part plan called Link-Up America, representing a joint effort between the companies providing local telephone service and the FCC to encourage universal telephone service, and is designed to help targeted, low-income households obtain telephone service at an affordable cost; under the first part of the plan, federal assistance is available to help defray one-time connection charges for initiation of service for qualified low-income customers, and under the second part of the plan, participating local exchange carriers (LECs) will be reimbursed for interest expenses incurred if the LEC

offers a no-interest deferred

payment plan for service connection charges for a period of 12 months or less. p. 402.

APPEARANCES: Philip M. Huston, Jr., Esq. for New England Telephone; Melinda H. Butler on behalf of Union Telephone Company; Orr and Reno by Thomas C. Platt, Esq. for Contel of New Hampshire, Inc. and Contel of Maine, Inc.; Robert Daino for Kearsarge Telephone Company and Meriden Telephone Company; William Stafford for Granite State Telephone Company; Paul Violette for Merrimack County Telephone Company; Peter Montgomery for Dunbarton Telephone Company; Robert Howard for Wilton Telephone Company; Shannon Dole for the Division of Human Resources; James Fredyma for the Division of Human Services; Alan Linder, Esq. of VOICE; Michael Holmes, Esq., Consumer Advocate; Mary Hain, Esq. for the Staff of the New Hampshire Public Utilities Commission.

By the COMMISSION:

REPORT

This generic docket was opened February 3, 1988 to investigate the provision in New Hampshire of the Federal Communications Commission (FCC) program known as Link-Up America. This report and order allows the telephone companies to put into effect a new telephone assistance program that would enable low income households currently without telephones to subscribe to telephone service by paying one-half of installation and connection charges up to $30.00.

I. *PROCEDURAL HISTORY*

On February 3, 1988 the New Hampshire Public Utilities Commission issued an Order of Notice, opening generic docket DE 88-012, to investigate the provision of Link-Up America in the State of New Hampshire. The order scheduled a prehearing conference and required the telephone companies to file a plan for implementation of Link-Up New Hampshire.

The commission order noted that the FCC had adopted the recommendations of the Federal State Joint Board to initiate the Link-Up program on April 16, 1987 (released on May 19, 1987) in FCC docket 78-72 and 80-286. The provisions of the Federal Link-Up America program are codified under the heading “Lifeline Connection Assistance” in Parts 36 and 67 of the FCC's rules, 47 CFR 36.711 *et. seq.* and 47 CFR Part 67.711 *et. seq.* (1987).

On February 11, 1988 the Consumer Advocate filed a notice of intervention pursuant to RSA 363:28 on behalf of the residential utility customers. The State of New Hampshire Division of Human Services, the Division of Elderly and Adult Services and Volunteers Organized in Community Education (VOICE) also filed motions to intervene.

At the prehearing conference, the commission granted the interventions of the Division of Human Services, the Division of Elderly and Adult Services and VOICE. The parties agreed to file by April 1, 1988 any and all information concerning the following: suggested program

eligibility criteria, information concerning the number of people who will qualify under these criteria, the size of the possible population for the program, the number of households that do not have telephone service, the number of customers disconnected in the

last 12 months, each company's policy of deposit requirements, its policy concerning the provision of service to those with existing arrearages, and information about what agencies are distributing aid in the form of social services and what types of aid are being distributed.

The parties presented a proposed initial procedural schedule to be followed in the proceeding. They also presented preliminary arguments concerning the scope of the proceeding and requested an opportunity to file legal memoranda on the scope.

On March 16, 1988, the New Hampshire Local Welfare Administrators Association filed a motion to intervene. On March 29, 1988, Community Services of Merrimack filed a motion to intervene. On April 1, 1988, the Community Action Program Belknap-Merrimack Counties, Inc. filed a motion to intervene.

At the April 11, 1988 meeting, the parties discussed public notification, plan implementation, administrative costs for implementation and monitoring and the information previously filed on April 1, 1988. By report and order no. 19,056 (April 11, 1988) the commission approved the proposed procedural schedule, allowed the parties to file legal memoranda on scope by May 2, 1988, and requested that the parties file the remainder of the proposed procedural schedule on April 18, 1988. The parties filed timely legal memoranda and position papers supporting differing scopes.

On June 7, 1988, the commission issued order no. 19,102 (73 NH PUC 232) on the scope of the proceedings. Reaffirming the original scope, the commission order approved investigation of deferred payment plans for connection charges, and security deposit waivers for low income households. The commission order further rejected consideration of security deposit waivers for customers with bad credit, lifeline assistance programs or arrearage payment policies since the FCC Link-Up program had not considered these issues.

On June 9, 1988, staff presented the first draft outline of a Link-Up Implementation Plan to the parties and following the July 18, 1988 meeting of the parties, submitted the final draft of the Link-Up Implementation Plan embodying the broad agreement of the parties. Staff also submitted a Link-Up application form and publicity flyer, which reflected the consensus of the parties.

On the following dates the companies listed below filed tariffs proposing to introduce Link-Up New Hampshire, effective September 7, 1988: on July 28, 1988, Merrimack County Telephone; on July 29, 1988, Dunbarton Telephone Company, Granite State Telephone Company, Union Telephone Company, and New England Telephone Company; on August 1, 1988, Contel of New Hampshire, Contel of Maine, Chichester Telephone Company, Meriden Telephone Company, and Kearsarge Telephone Company; and on August 17, 1988, Wilton Telephone Company. The commission suspended these tariffs by an order issued August 26, 1988. Having reached consensus on all issues, staff presented testimony in support of this agreement at the September 7, 1988 hearing.

In support of the consensus, a stipulated agreement was entered into on September 6, 1988 among New England Telephone Company, the New Hampshire Telephone Associations, Union Telephone Company Contel of New Hampshire, Inc., Contel of Maine, Inc., Kearsarge Telephone Company, Meriden Telephone Company, Granite State Telephone Company, Merrimack County Telephone Company, Dunbarton

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Telephone Company, Wilton Telephone Company, Volunteers Organized in Community Education, the Consumer Advocate, the Division of Human Resources, the Division of Human Services, the Division of Elderly and Adult Services, and the Staff of the Public Utilities Commission.

The commission held a hearing on the merits on September 7, 1988.

II. *POSITIONS OF THE PARTIES*

The parties and the staff entered into a settlement the purpose of which was to dispose of all aspects of this case. By this agreement, the parties concurred that the local exchange telephone companies in the State of New Hampshire would implement the program known as Link-Up New Hampshire as fully described in the Link-Up New Hampshire Implementation Plan (Attachment 1). Two matters at issue, although not affecting the settlement, remained outstanding in this proceeding: whether recipients of unemployment compensation should be eligible to apply for the Link-Up New Hampshire Program, and Union Telephone Company's philosophical reservations concerning social ratemaking and the appropriate business functions of a regulated utility.

A. *Unemployment Compensation Recipients*

Staff's recommended inclusion of unemployment compensation recipients amongst those eligible to receive Link-Up benefits, in part because the sudden loss of prior income level and the rate of subsequent reemployment, may be conditional on the reestablishment of phone service. However, a number of parties believed that the lack of a means test or consideration of overall family income in qualifying unemployment compensation recipients for assistance raised doubts as to the appropriateness of targeting a low income program like Link-Up for this population.

The Department of Employment Security has indicated that due to the present buoyant nature of the New Hampshire economy, unemployment compensation recipients receive assistance for an average of only four weeks before reentering the workforce; moreover, many recipients may already be covered by other Link-Up approved programs. However, the parties recognize that incorporation of unemployment compensation recipients in the Plan may become more critical in the event of a severe economic downturn.

B. *Philosophical Reservations*

a) Union Telephone believes that the Link-Up Implementation Plan suggests the notion of social ratemaking, which in turn leads to inefficiencies in the allocation of resources through the process of discriminatory pricing. However, Union is willing to participate in Link-Up New

Hampshire, believing that there will be no undue price discrimination due to the size and source of the subsidy.

b) Union Telephone is also concerned about document identification and record keeping by telephone company personnel in qualifying applicants for Link-Up New Hampshire. Although Union believes that this process approaches the area of utility practice of social service functions, and that utilities in general should not be in the social service business, nevertheless the company supports the Plan out of its commitment to universal service.

Findings

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The commission has noted that the FCC had adopted the recommendations of the Federal-State Joint Board to initiate the Link-Up program on April 16, 1987.

[1] The parties have established the Link-Up New Hampshire Plan in order to implement the FCC recommendations. The Plan comprises two major components:

a) Link-Up provides federal assistance to cover one-half of the connection charges, up to $30, for eligible low income beneficiaries.

b) Where service connection charges are greater than $30, and where a local exchange carrier offers a deferred payment plan for service connection charges, for a period of twelve months or less, federal assistance is available to the carrier to cover the interest on deferred costs of up to $200. Additionally, the Plan waives the security deposit for customers with unknown or good credit.

[2] Link-Up Plan eligibility is conditional on satisfying both federal and state criteria.

The federal criteria require that:

1) The customer must have lived at an address where there had been no phone service for at least three months prior to the date Link-Up assistance is requested.

2) The customer must not have received Link-Up assistance within the last two years.

3) The customer must not be a dependent for federal income tax purposes, unless he or she is more than 60 years of age.

4) The customer must meet the requirements of a state established means test.

The state criterion provides that: all New Hampshire households participating in low income assistance or energy assistance programs as listed under Section F of the Link-Up New Hampshire Plan (see Attachment 1) are eligible to receive Link-Up assistance.

Administration of the Plan permits the first three FCC mandated eligibility criteria to be self-certified by the applicant, as provided in the FCC rules. With respect to the fourth criterion, income verification, all applicants eligible to receive public assistance as defined in Section F of the Plan, will have their income eligibility verified by the respective donor agency. Upon presentation to the telephone company of proof of participation in a designated assistance program, they will automatically qualify for Link-Up assistance.

[3] The commission has determined that Link-Up New Hampshire will not require either

intrastate funding mechanisms or local rate increases, since the FCC has authorized an expense adjustment for Lifeline Connection Assistance (LCA). The LCA expense adjustment will enable exchange carriers certified by the FCC to make an additional assignment of expenses to the interstate jurisdiction from the intrastate jurisdiction. Assignable expenses are those associated with reduced charges for connection of a single line telephone for a residential subscriber and/or the interest expense associated with deferred payment of connection charges.

[4] Concerning the eligibility of unemployment compensation recipients, the commission notes that the majority of this population is already covered under existing, eligible, assistance programs, and therefore, we will exclude this group for the present. However, in the event of an economic downturn in the New Hampshire economy we may revisit this issue at a later date.

The commission finds that any amendments arising out of the FCC NOPR on Link-Up America will require subsequent modification of Link-Up New Hampshire program. Moreover, the commission

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welcomes the willingness of the parties to review the agreement on an ongoing basis in an effort to extend the pool of potentially eligible Link-Up applicants to include those members of the working poor and elderly who currently do not receive assistance from any other program.

[5] The commission recognizes that the stipulated agreement has been accepted and the Implementation Plan approved by all parties. High initial service installation and connection charges appear to be the primary barrier to subscribership among the 20-30,000 low income households in New Hampshire who lack telephone service. Providing these people with access to the telephone system will provide substantial benefits, which include rapid emergency communication, more efficient resource allocation and a general facilitation of choice and competition as well as expansion of the market place. Current subscribers will also benefit because increasing the size of the network increases the utility of phone service for all and enables us to approach the goal of universal service.

Therefore, the commission finds that the enactment of Link-Up New Hampshire is in the public interest.

Our order will issue accordingly.

ORDER

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

ORDERED, that the program Link-Up New Hampshire designed to qualify for funds under the connection fee subsidy program known as the Link-Up America, outlined in FCC 87-133, is approved; and it is

FURTHER ORDERED, that all local exchange companies under the commission's jurisdiction in New Hampshire shall provide Link-Up New Hampshire on such terms as outlined above and contained in the Implementation Plan (Attachment 1) and shall submit such information to the commission, the FCC and the National Exchange Carrier Association, as is necessary to fully implement this program; and it is

FURTHER ORDERED, that this report and order shall be filed with the Chief, Common Carrier Bureau of the FCC, 1919 M Street, N.W., Washington, D.C. 20554, for the purpose of securing certification for this program and the consequent availability of program funds; and it is

FURTHER ORDERED, that upon receipt of FCC certification of the Link-Up New Hampshire Plan the companies shall file compliance tariffs pursuant to this order and the FCC order and bearing the following annotation:

"Authorized by commission order no. 19,192 in DE 88-012 (dated: October 3, 1988) and FCC 87-133 (CC Docket Nos. 78-72 and 80-286, adopted April 16, 1987)."

By order of the Public Utilities Commission of New Hampshire this third day of October, 1988.

ATTACHMENT I.

LINK-UP NEW HAMPSHIRE

DE-88-012

Implementation Plan

A. Background and Rationale

The pace of change in the telecommunications industry is having a direct impact on residential local service rates. The

effort to align prices with costs has led to upward pressure on local rates, while interstate long distance rates have declined. In an effort to offset the local service revenue loss the FCC has established a Customer Access Line Charge (CALC) which is applied to all lines. Currently this charge represents a monthly increase of $2.60 in customers local rates.

The New Hampshire Public Utilities Commission and the New Hampshire Telephone Companies have always adhered to the principle that basic local service should be universally available. Clearly, the value of the telephone network is enhanced by increasing the number of people connected to it. It follows, therefore, that financial assistance may be required to ensure that low income telephone users are provided with the opportunity to have access to the network.

To ensure Universal Service, one strategy for the Telco's and the NHPUC is participation in the Link-Up America program. New Hampshire plans to begin participating in the Link-Up America program by the 4th quarter of 1988.

B. Plan Description

[6] The Federal Communications Commission (FCC) adopted a two part plan called Link-Up America by Order No. FCC 87-133. Link-Up represents a joint effort between the companies providing local telephone service and the FCC to encourage Universal Service. It is designed to help targeted, low income households obtain telephone service at an affordable cost.

Under the first part of the plan, federal assistance is available to help defray one-time connection charges for initiation of service for qualified low income customers. Funds will be available to pay one-half of the connection charges up to maximum benefit of $30.

Under the second part of the plan, participating local exchange carriers (LEC) will be reimbursed for interest expenses incurred if the LEC offers a no interest deferred payment plan for service connection charges for a period of 12 months or less. A no interest deferred payment plan will be offered when the service connection charges are over $30.00. Assistance will be available on connection costs of up to $200 per subscriber, when the LEC offers qualifying Link-Up subscribers the deferred payment plan. Additionally, LEC, will offer a waiver of the security deposit for customers without bad credit. Applicants may receive assistance only for connection of a single telephone line at the applicant's principal place of residence. The Commission believes the Link-Up America Plan should be available throughout the State of New Hampshire. To do so requires the involvement of both the local exchange telephone companies, and the human service agencies.

C. Criteria for Eligibility

FCC

Under the FCC order, eligibility for the Link-Up America discount requires that a prospective applicant meet the following criteria to ensure that assistance is appropriately targeted:

1) The customer must have lived at an address where there has been no telephone service for at least three months prior to the date Link-Up assistance is requested.

2) The customer must have not received

Link-Up assistance within the last two years.

3) The customer must not be a dependent for federal income tax purposes, unless he or she is more than 60 years of age.

4) The customer must meet the requirements of a state established income test.

State of New Hampshire

All New Hampshire households which are participating in low income assistance or energy assistance programs as listed on page five (following), are eligible for the Link-Up New Hampshire program.

D. Funding

Since this program will be funded solely by charges assessed on inter-exchange carriers, it will not require intrastate funding mechanisms or local rate increases.

The FCC has authorized an expense adjustment for Lifeline Connection Assistance (LCA). The LCA expense adjustment will permit exchange carriers certified by the FCC to make an additional assignment of expenses to the interstate jurisdiction from the intrastate jurisdiction. The expenses to be assigned are those associated with reduced charges for connection of a single

line telephone for a resident subscriber and/or the interest expense associated with deferred payment of connection charges.

Certified exchange carriers will be permitted to submit, as an expense adjustment, up to 50% of the normal tariffed exchange charges for initial connection of service, or $30, whichever is less. Further, the exchange carriers will be permitted to include interest costs on the balance of installation costs up to $200, if interest charges to qualified applicants are deferred. The interest shall be applied only to the amounts actually outstanding at the same interest rate as the 10 year Treasury Note in effect on January 1 of the year the data is submitted.

E. Publicity

In order to provide notice to persons who would benefit from Link-Up America, the Commission will publicize the plan through the news media. Additional program information will be provided jointly by the Telephone Companies and the Commission to the New Hampshire Division of Health and Human Services, the Division of Human Resources and other interested parties. A brochure is being developed by the Telephone Companies.

F. Eligibility

The NHPUC staff proposes that New Hampshire households which receive assistance from the following programs, are also eligible for the Link-Up program, providing all program criteria have been met.

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

	1988
Recipients of Aid to Families with Dependent Children (AFDC)	*5,000 families*
Foodstamp Program	*9,000 families*
Recipients of Old Age Assistance (OAA) *Recipients of Aid to Permanently/Totally Disabled (APTD)* *Recipients of Aid to the Needy Blind (ANB)* *Recipients of Supplementary Security Income (SSI) [Title (XVI), Federal Social Security Act (42 USCA Section 1381, et. seq.)]*	*10,160 Elderly/ Incapacitated*
Fuel Assistance Program Weatherization Assistance Program	23-24,000 Households
WIC program (supplemental, feeding program for women, infants health)	13,000 Individuals
Unemployment Compensation recipients	
Town/city welfare recipients	
Public/Subsidized housing recipients	
Title XX recipients. [Federal Social Security Act (42 USCA Section 1397, *et. seq.*)]	

We estimate that between 20,000-30,000 households may apply for Link-Up New Hampshire benefits.

G. Administration

In order to ease the administrative burden of the plan, staff proposes that the NHPUC permit the first three eligibility criteria to be self-certified by the applicant.

Applicants, by virtue of their eligibility to receive public assistance, (as defined previously under Section F) will have had their income eligibility verified by their respective donor agency.

Thus, upon presentation, by mail or in person, to the telephone company of either:

an identification card,
entitlement letter,
check stub (Department of Employment Security),
notice of decision
copy of lease

furnished by the donor agency within the last 12 months, applicants will automatically qualify for Link-Up assistance.

The following state agencies have agreed to provide proof of public assistance program eligibility to Link-Up applicants.

1) Department of Health and Human Services
2) Division of Human Resources

H. Monitoring of Link-Up

Staff recommends that telephone companies provide the following information to the NHPUC on a quarterly basis:

No. of Link-Up applications filed
No. of Link-Up applications approved
No. of Link-Up applicants actually connected to the system
No. of Link-Up customers who were subsequently disconnected.

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I. Implementation Timeline

Subject to negotiation with the Telcos, the Department of Health and Human Services, CAP etc., being satisfactorily concluded, and upon receipt of FCC certification, the Link-Up program should commence in the 4th quarter of 1988.

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NH.PUC*10/06/88*[52060]*73 NH PUC 405*Southern New Hampshire Water Company, Inc.

[Go to End of 52060]

73 NH PUC 405

Re Southern New Hampshire Water Company, Inc.

DF 88-138
Order No. 19,193

New Hampshire Public Utilities Commission

October 6, 1988

PETITION by a water utility for authority to increase authorized capital and to issue and sell securities to its sole shareholder; granted.

SECURITY ISSUES, § 44 — Factors affecting authorization — Public good — Affiliated interests.

[N.H.] A water utility received approval to increase authorized capital and to issue shares of common stock to its sole shareholder, where the commission found that the increase and issuance were consistent with the public good; in addition, the utility was authorized to receive immediately an advance of cash from its parent, provided that the amount would be transferred to the utility's stated capital and reflected as the purchase price for the first increment of stock to be issued.

By the COMMISSION:

ORDER

WHEREAS, Southern New Hampshire Water Company, Inc. (SNHW) is authorized to operate as a public utility with a principal place of business in Londonderry, Rockingham County, New Hampshire; and

WHEREAS, SNHW pursuant to RSA 369, filed with this commission on September 16, 1988 a petition for authority and approval to Increase Authorized Capital and Issue and Sell Securities; and

WHEREAS, SNHW's authorized capital is as follows: 15,000 shares of common capital stock, having a par value of $l00 per share, of which 14,400 shares have been issued and are outstanding; and

WHEREAS, SNHW proposes to increase its authorized capital from 15,000 shares of common capital stock to 20,000 shares of capital stock, and to issue to Consumers Water Company (Consumers), its only shareholder, 5,000 shares of $100 par value common stock for a purchase price of $400 per share, for a total consideration of $2,000,000 in cash; and

WHEREAS, SNHW states that Consumers shall purchase 1,250 shares of such stock for $500,000 by December 31, 1988; and Consumers shall purchase the balance of such shares (3,750 shares) for $1,500,000 before the end of the first quarter of 1989; and

WHEREAS, SNHW states that the proceeds from the sale of such shares will be used inter alia to support 1988 construction and expansion program; to provide an addition to the permanent capital of SNHW; to provide general working capital and; to facilitate SNHW's

long-term borrowing efforts through the sale of Series H Bonds under its First Mortgage Indenture; and

WHEREAS, the New Hampshire Public Utilities Commission, pursuant to RSA 369:1 and 14, finds that the increase in

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authorized capital and subsequent issuance of the requested shares as set forth and upon the terms proposed in the petition are consistent with the public good; it is hereby

ORDERED, that SNHW is hereby authorized to issue and sell 5,000 shares of common stock, $100 par value, for $2,000,000 in cash, to its sole shareholder, Consumer Water Company; and it is

FURTHER ORDERED, that SNHW is authorized to immediately receive from its parent the sum of $500,000 as an advance of capital; provided that such amount will be transferred to Petitioner's stated capital and reflected as the purchase price for the first increment of stock to be issued; and it is

FURTHER ORDERED, that SNHW shall on January first and July first of each year, file with this commission a detailed a 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.

By Order of the Public Utilities Commission of New Hampshire this sixth day of October, 1988.

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NH.PUC*10/13/88*[52061]*73 NH PUC 406*New England Telephone and Telegraph Company, Inc.

[Go to End of 52061]

73 NH PUC 406

Re New England Telephone and Telegraph Company, Inc.

DE 88-147
Order No. 19,195

New Hampshire Public Utilities Commission

October 13, 1988

ORDER revising telephone utility tariff.

SERVICE, § 463 — Telephone — Flexpath® digital private branch exchange — Tariff revision.

[N.H.] A telephone utility's tariff was revised to reflect the fact that Flexpath® digital private branch exchange service can now be offered by the company from suitably equipped central offices rather than from digital central offices only as was previously the case.

By the COMMISSION:

ORDER

WHEREAS, on September 28, 1988 New England Telephone Company, Inc. (company) filed its NHPUC No. 75, Part C, Section 5 — Second Revision of Page 1 regarding Flexpath® digital PBX service; and

WHEREAS, Flexpath® digital PBX service can now be offered by the company from suitably equipped central offices rather than from digital central offices only as was previously the case in its NHPUC No. 75, Part C, Section 5 — First Revision of Page 1; and

WHEREAS, the company has requested that Chapter Puc 1603 and 1601.05 (J) tariff filing requirements be waived; and

WHEREAS, a customer request has

been received by the company for this modification in the company's Flexpath® tariff; and

WHEREAS, such tariff revision does not change the rates for Flexpath® service; and

WHEREAS, upon review of the proposed revision the commission finds the changes to be in the public good; it is hereby

ORDERED, that the company's NHPUC No. 75, Part C, Section 5 — Second Revision of page 1 supersede its First Revision of that same Page 1 effective October 28, 1988; and it is

FURTHER ORDERED, that Chapter Puc 1603 and 1601.05 (J) tariff filing requirement be waived.

By order of the Public Utilities Commission of New Hampshire this thirteenth day of October, 1988.

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NH.PUC*10/14/88*[52062]*73 NH PUC 407*New Hampshire Electric Cooperative, Inc.

[Go to End of 52062]

73 NH PUC 407

Re New Hampshire Electric Cooperative, Inc.

DE 88-150

Order No. 19,196

New Hampshire Public Utilities Commission

October 14, 1988

ORDER nisi authorizing expansion of electric cooperative's service territory.

SERVICE, § 198 — Extensions — Expansion of service territory — Electric cooperative.

[N.H.] An electric cooperative was authorized to enlarge its present franchise territory by expanding into a small, unincorporated municipal area because: (1) the present franchise territory of the cooperative surrounded the new territory on three sides; (2) the cooperative was the nearest utility to serve the new area, and was ready, willing and able to supply the requested service; and (3) the only other utility to border the new territory did not object to the cooperative's provision of service.

By the COMMISSION:

ORDER

WHEREAS, on October 4, 1988, the New Hampshire Electric Cooperative, Inc., (Cooperative) filed with this commission, a petition pursuant to statutes (RSA 374:22-a *et seq.)* to enlarge its present franchise territory into Hale's Location, a small, unincorporated municipal area between Bartlett and Conway, in Carroll County, New Hampshire; and

WHEREAS, Hale's Location is presently an unfranchised area; and

WHEREAS, the present franchise territory of the company surrounds Hale's Location on three sides; and

WHEREAS, Robert H. Carleton, Hales Location Realty Trust, has applied for electric service to the Cooperative for such service to be supplied within Hale's Location; and

WHEREAS, the Cooperative is the nearest utility to serve this proposed customer and this location, and is ready, willing and able to supply the requested electric service; and

WHEREAS, the only other utility to border Hale's Location, Public Service Company of New Hampshire, does not object to the Cooperative providing service in Hale's Location; and

WHEREAS, the commission's investigation finds the request to enlarge the franchise territory of the Cooperative to be in the public good; and

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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 4, 1988; and it is

FURTHER ORDERED, that the petitioner effect said notification by publication of this order once in a newspaper having general circulation in the area of Hale's Location and once in *The Union Leader*. Such publications to be no later than October 28, 1988 and documented by affidavit to be filed with this office on or before November 11,1988; and it is

FURTHER ORDERED, that the New Hampshire Electric Cooperative, Inc., file a new Commission Service Territory Map within thirty days, reflecting the above change in service area brought about by this revision in franchise boundary; and specifying thereon that the map is effective on the date hereof by authority of the above NHPUC Order No.; and it is

FURTHER ORDERED: *NISI* that the Cooperative be authorized the service franchise, pursuant to RSA 374:22-a, to serve the proposed customer and any future customers in the unincorporated municipal area known as Hale's Location, New Hampshire; and it is

FURTHER ORDERED, that such authority shall be effective 30 days from the date of this order, unless a hearing is requested as provided above or the commission otherwise directs prior to the proposed effective date.

By order of the Public Utilities Commission of New Hampshire this fourteenth day of October, 1988.

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NH.PUC*10/14/88*[52063]*73 NH PUC 408*New England Telephone and Telegraph Company, Inc.

[Go to End of 52063]

73 NH PUC 408

Re New England Telephone and Telegraph Company, Inc.

DE 88-144
Order No. 19,197

New Hampshire Public Utilities Commission

October 14, 1988

ORDER nisi authorizing telephone plant construction.

CERTIFICATES, § 123 — Grant or refusal — Telephone plant construction.

[N.H.] A telephone utility was authorized to construct and maintain pad-mounted telephone plant on state-owned land in order to provide service to a hospital, provided that no hearing requests on the issue were received.

By the COMMISSION:

ORDER

WHEREAS, on September 29, 1988, New England Telephone & Telegraph Company, Inc. filed with this commission a petition seeking authorization under RSA 371:17 et seq to construct and maintain pad-mounted telephone plant on land owned by New Hampshire Hospital; and

WHEREAS such plant is designed to meet the telephone requirements of the newly constructed facilities of the New Hampshire Hospital; and

WHEREAS, such plans have been approved by Dr. Jack E. Melton, Superintendent of said hospital; and

WHEREAS, the commission finds such construction necessary for NET to meet its

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requirement to serve its franchise area; and

WHEREAS, such construction initially is found in the public good, not adversely affecting the use of said land; and

WHEREAS, such telephone plant will be constructed according to the National Electrical Safety Code and other applicable codes; and

WHEREAS, such construction is said to be 35 feet east of the Hospital property line; and

WHEREAS, the commission feels abutters should be given the opportunity to respond in support of or in opposition to, such construction; it is

ORDERED, that all persons desiring to respond to this petition be notified that they may submit comments in writing or file a written request for hearing before the commission no later than October 28, 1988; and it is

FURTHER ORDERED, that such notice be given via one-time publication of a summary of this petition in the *Concord Monitor,* such publication to appear no later than October 21, 1988 and documented by affidavit to be made on a copy of said notice and filed with the commission; and it is

FURTHER ORDERED, *NISI* that NET be, and hereby is, granted license under RSA 371:17 et seq to construct and maintain pad-mounted telephone plant on state-owned property off Clinton Street in Concord, New Hampshire, such construction identified by maps and drawings 141989-1, 141989-2 and 141989-3 on file with the commission; and it is

FURTHER ORDERED, that all construction shall meet 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 fourteenth day of October 1988.

73 NH PUC 409

Re Public Service Company of New Hampshire

DR 88-126
Order No. 19,198

New Hampshire Public Utilities Commission

October 14, 1988

ORDER granting approval of an agreement concerning interruptible service of an electric utility.

RATES, § 322 — Electric — Demand and load — Interruptible service — Credits.

[N.H.] Approval was granted of an agreement concerning interruptible service of an electric utility, which proposed to improve and increase participation in its program of offering interruptible service as a means of reducing peak load through efforts to simplify the program's provisions and to increase the rewards for participation; the agreement, which the commission found was just and reasonable, included an increase in the maximum credit for interruption and a sliding scale of benefit based on a customer's performance relative to its designated interruptible load, and provided that customers were not required to compensate the utility for interruptible load that was not delivered.

APPEARANCES: Gerald M. Eaton, Esq. for Public Service Company of New Hampshire; Denise Rosenblum for the

office of the Consumer Advocate; Dr. Sarah P. Voll, for the Commission Staff.

By the COMMISSION:

REPORT

I. *PROCEDURAL HISTORY*

On August 29, 1988 Public Service Company of New Hampshire (PSNH or company) filed with the commission proposed Original Pages 68, 69 and 70 to NHPUC No. 31 — Electricity, establishing a Winter Interruptible Service and Use of Customer Standby Generation Rate WI for effect December 1, 1988. First Revised Page 2 was also filed to incorporate a reference to Rate

WI into the table of contents of the company's tariff.

In support of the proposed tariff pages the company filed the direct testimony of Stephen Hall, James Rodier and Wyatt Brown. Mr. Hall's testimony describes the provisions of Rate WI whereas Mr. Rodier's testimony concentrates on the company's efforts to maximize customer participation. Mr. Brown's testimony discusses supply and demand issues and avoided costs.

On September 1, 1988, the commission issued an order of notice which suspended proposed Rate WI, ordered a prehearing conference to be held on September 27, 1988 and a hearing on October 11, 1988.

On September 6, 1988, the Office of the Consumer Advocate filed intervention and on September 27, 1988 the parties met for preliminary discussion and to solicit further information regarding the company's power supply plans for the upcoming winter. The parties met for a second time on October 5, 1988 to narrow issues.

On October 10, 1988 the company, staff and Consumer Advocate filed with the commission on a Recommendation of the Parties for Resolution of the Proceeding, which disposes of all issues in this case.

II. *POSITIONS OF THE PARTIES*

PSNH

The company stated that the purpose of the filing was to improve the performance of its program for offering interruptible service as a means of reducing its peak load. This program was first introduced in the winter of 1987/88 and consisted of two options, Rate WI — PSNH and Rate WI — NEPOOL. Under Rate WI — NEPOOL, interruptions were requested whenever the New England Power Pool (NEPOOL) implemented Action 4, of Operating Procedure No. 4. Under Rate WI — PSNH, interruptions were requested whenever PSNH anticipated that its annual winter peak was likely to occur.

The company noted that the level of participation during the winter of 1987/88 was less than anticipated, having achieved only 1,000 KW of interruptible load. To raise the level of participation in the program the company proposed the following revisions:

1. Reduce the number of rates from two to one;

2. Reduce the minimum amount of load that a customer must designate as interruptible;

3. Increase the credit for interruption;

4. Provide the customer with two choices of lead time for notification;

5. Remove the penalty for failure to interrupt;

6. Provide the customer with a small credit if interruptions are not requested in any month;

7. Make the program permanent rather than of one year duration.

Staff

In general, staff supported the company's efforts to simplify the program's provisions and to increase the rewards for participation. However, staff was concerned that given PSNH's avoided cost of almost $83 per KW per year, the proposed increase in the credit to only $15 per KW per month for three months (or $45 per KW per year) might unnecessarily constrain participation in the program. Secondly, staff argued that to remove totally the penalty for failure to interrupt would increase the risk of non-participation and thus lessen the program's usefulness as a power supply option.

III. *RECOMMENDATION OF THE PARTIES*

After discussions with staff and the Consumer Advocate, the company agreed to increase the maximum credit to $18 per KW per month. With regard to staff's concern about the lack of a penalty, the parties developed a sliding scale of benefit based on the customer's performance relative to his or her designated interruptible load. However, it was agreed that no customer would be required to compensate the company for interruptible load not delivered.

These agreements are reflected in proposed Original Page 68 and First Revised Pages 69 and 70 (see the Attachment to this report "Recommendation of the Parties for Resolution of the Proceeding"). The parties also recommended use of an expedited procedure for approving special interruptible contracts for customers with operational characteristics that do not precisely meet the terms set forth in the proposed tariff pages. For special contracts reasonably consistent with the rates designs described in Rate WI, the agreement calls for the commission to issue an order *nisi.*

IV. *COMMISSION ANALYSIS*

The commission finds that the agreement between the parties embodied in the "Recommendation of the Parties for Resolution of the Proceeding" is supported by the evidence and is just and reasonable. We therefore accept it for resolution of this case. The commission will again require PSNH to submit a detailed report on completion of the 1988-1989 program 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

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

ORDERED, that the Recommendation of the Parties for Resolution of the Proceeding be, and hereby is, approved; and it is

FURTHER ORDERED, that the First Revised Page 2, Original Page 68, and First Revised Pages 69 and 70 to NHPUC No. 31 — Electricity be, and hereby are, approved; and it is

FURTHER ORDERED, that the company will file compliance tariffs annotated with the number of this order bearing an effective date of December 1, 1988; and it is

FURTHER ORDERED, that Public Service Company of New Hampshire file a detailed report on the interruptible rate program by May 1, 1989.

By order of the Public Utilities Commission of New Hampshire this fourteenth day of October, 1988.

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NH.PUC*10/14/88*[52065]*73 NH PUC 412*Exeter and Hampton Electric Company

[Go to End of 52065]

73 NH PUC 412

Re Exeter and Hampton Electric Company

DE 88-111
Order No. 19,199

New Hampshire Public Utilities Commission

October 14, 1988

REQUEST by an electric utility for a continuation of a one-year temporary waiver from arrearage provisions contained in winter termination rules; granted.

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1. PAYMENT, § 33 — Methods of enforcing payment — Denial of service — Winter termination rules — Waiver — Factors considered — Electrical service protection program — Electric utility.

[N.H.] In a proceeding to consider whether an electric utility should be granted a waiver from winter termination rules (WTR) for the sixth consecutive year, so that the utility could continue implementation of an experimental program known as electrical service protection (ESP) as a protection to residential ratepayers in lieu of winter termination regulations, the commission's concern was to balance the cost of some erosion of WTR protection by the utility's customers against the benefits that might accrue to the utility from promoting the ESP program. p. 416.

2. PAYMENT, § 33 — Methods of enforcing payment — Denial of service — Winter termination rules — Waiver — Reasons for granting — Electrical service protection program — Electric utility.

[N.H.] An electric utility was granted a one-year temporary waiver of the arrearage provisions of winter termination rules for the sixth consecutive year, so that the utility could continue implementation of an experimental program known as electrical service protection

(ESP) as a protection to residential ratepayers in lieu of winter termination regulations, because given the exigencies of time, and that former ESP customers with pre-winter arrearages might suffer undue hardship from a rejection of the current waiver request, the commission was unwilling to reject the waiver for 1988-89 at a late date, despite a clear erosion of winter protection for residential customers (in terms of higher frequencies of temporary and permanent disconnects issued) as a result of ESP; however, the order was issued on a clear understanding that future waivers were unlikely, and that the commission would open a generic docket to review the winter termination rules. p. 416.

APPEARANCES: LeBoeuf, Lamb, Lieby and McRae by Elias G. Farrah, Esq. for the Petitioner, Exeter and Hampton Electric Company; Martin C. Rothfelder, Esq. for the Staff of the New Hampshire Public Utilities Commission.

By the COMMISSION:

REPORT

On August 3, 1988, Exeter and Hampton Electric Company (E & H or company) requested a continuation of a temporary

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waiver from the arrearage provisions contained in Puc 303.08 (k)(2), (3) and (6) of the Winter Termination Rules. This report and order grants a full waiver of the Winter Termination Rules for the period December 1, 1988 to December 1, 1989, given that a change in winter protection at this late date in the year would prove excessively burdensome to customers. However, the order is issued on the clear understanding that future waivers are unlikely, and that the commission will be opening a generic docket to review the winter rules.

PROCEDURAL HISTORY

On October 26, 1979, the commission initiated Docket No. DE 79-217 to determine whether existing termination regulations should be altered. Following a hearing on December 13, 1979, the commission by Order No. 13,982 instituted temporary rules governing emergency termination procedures. In docket DE 80-154, the commission incorporated the winter termination rules into the permanent commission rules as paragraphs 303.08 and 503.09.

In December 1981, the commission opened docket DRM 81-374 to investigate and reevaluate the Winter Termination Rules. In its subsequent Order No. 15,952 (67 NH PUC 746) established on an emergency basis on November 23, 1982 the commission amended the rules concerning arrearage limits not subject to disconnection, and extended the protection of the elderly to include those 65 or above. In docket DRM 82-304, the commission by Order No. 16,164 (68 NH PUC 22) reaffirmed its findings and adopted them into the permanent rules.

On September 27, 1983 in its Supplemental Order No. 16,656 (68 NH PUC 566), the commission ordered the reconvening of the Winter Rules Committee in order to aid the commission in its evaluation of winter termination policies. In addition, the commission noted that the committee need not be the only source of long term examination of winter termination

policies. The commission indicated its interest in considering requests for waivers when those waivers included serious alternative programs.

On September 16, 1983, E & H filed a Petition for Temporary Exemption from Puc Rules 303.08 (k)(2), (3) and (6) in order to implement an experimental program referred to as Electrical Service Protection (ESP) as a protection to residential ratepayers in lieu of the above regulations. In Order No. 16,751 (68 NH PUC 660), DE 83-297, the commission found that E & H's efforts in developing the program were constructive and therefore ordered the waiving of commission rules on winter termination of service to allow its implementation.

The company has sought and received a continuation of the temporary waiver for each subsequent year since 1983. On August 3, 1988 E & H requested a continuation of the waiver for the sixth consecutive year. In DE 88-111, the commission issued an order of notice for a prehearing conference on September 2, 1988 to investigate the impact on Exeter and Hampton's residential customers of the experimental ESP program. A hearing on the merits was held on September 21, 1988. The company filed a brief on September 25, 1988.

POSITIONS OF THE PARTIES

A. Exeter and Hampton Electric Company

Exeter and Hampton Electric Company

asserts that the ESP program provides the following:

1) Protection from termination for non-payment, for customers anticipating difficulty in paying bills over the winter period, or for customers beginning the winter period with arrearages.

2) Assurance that arrearages accumulated during winter do not represent as great a burden to the customer at the expiration of the winter period.

3) Commitment by customers to pay outstanding obligations through the requirement that customers select a level of payments that they can afford.

4) Discouragement of abuse by non-needy customers while protecting the needy.

The company asserts that the waiver of Puc Rules 303.08 (k)(2), (3) and (6) enables them to send out disconnect notices during the winter period, encouraging the payment of bills, and avoiding abuse by the non-needy.

The company suggests the following as benefits arising from the waiver of each consecutive rule.

(i) Waiver of Puc 303.08 (k)(2)

Under WTR's with residential bills averaging $40/month during the winter period, customers need not make any contribution to their winter bill, since they are unlikely to reach the WTR arrearage limits of $175 and $300. Without the waiver, customers have little incentive to participate in ESP, while the company has no discretion in disconnecting for non-payment, as long as the customer's bill is under the WTR arrearage limits. Since residential customers do not

pay interest on arrearages, without the waiver, non-needy customers may simply abuse commission policies by withholding payment, interest free until the end of the winter.

(ii) Waiver of Puc 303.08 (k)(3)

If a customer carries an arrearage into the winter period, he may not be protected from disconnection under WTR's. With the waiver, an ESP customer will not be disconnected between December 1st or prior to March 31, despite the magnitude of the arrearage, as long as he enrolls in the ESP program.

(iii) Waiver of Puc 303.08 (k)(6)

By requesting a four month payback period for winter arrearages instead of the six months guaranteed under WTR's, ESP enables customers to have two arrearage free months prior to the next winter.

The company asserts that given the increase in its customer's base, its overall bad debt has improved, in part due to the ESP program. Stating that program participants have consistently supported the program, the company concludes that the small amount of arrearages associated with permanent disconnections coupled with the availability of fuel assistance funds makes it unlikely that those disconnects involve hardship for needy customers.

Finally, by not seeking a variance of Puc 303.08 (k)(4) or (k)(5), the company believes that the `safety net' component of WTRs, that is protection for the elderly, and no disconnections of residential customers without prior PUC approval, ensures adequate protection.

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STAFF POSITION

From a review of Exeter and Hampton's ESP program, staff has concluded that there has been a net loss in consumers welfare for E & H's customers relative to the periods when WTR's were in effect.

Staff believes that E & H's customers have experienced the following erosions of protection:

1) Following the introduction of ESP there was a three fold increase in permanent disconnections of service. Since then disconnections have run at an average high of 46.6 permanent disconnections per winter period.

2) Following the introduction of ESP, there was a threefold increase in the number of Exeter and Hampton's customer experiencing disconnections and reconnections. Since then disconnects and reconnects have averaged a high of 88.8 disconnects/reconnects per winter period.

3) Following the introduction of ESP, the number of residential disconnect notices sent out increased by 76%. Since then, residential disconnect notices have run at an average high of 4317.8 per winter period.

Staff believes that the 4%/year increase in the company's customer base does not warrant the increasing frequencies of temporary and permanent disconnects.

Noting that the company's ratio of bad debt to operating revenues fell to 0.0012 during the

last WTR's governed year, and that the bad debt ratio has remained at a very favorable average of .00127, staff concludes that the erosion of protection has not led to a concomitant gain in the company's profitability, nor do any further gains seem likely.

Furthermore, between 1985 and 1987 of the ESP program, while E & H serves 5.84% of New Hampshire's electrical utility customers, the company has requested an average of 35.4% of all disconnect authorizations, and an average of 18% of all actual disconnects. E & H is far more aggressive at sending out disconnect notices than the other New Hampshire utilities.

Reviewing the efficiency of the company's so called `safety net', staff recognizes that Puc 303.08 (k)(5) does indeed declare that no residential customer will be disconnected during the winter periods without prior PUC approval. However, staff views this procedure as primarily a recording process which contains no evaluation of the merits of each case, thereby offering few additional safeguards against disconnection.

Arguing that the net welfare loss suffered by customers is not mitigated by significant utility gains, staff recommends the following:

— return to the PUC's Winter Termination Rules to reestablish uniformity of protection statewide.

— approve a waiver of (k)(3) along with a truncated ESP program, in the short run, to avoid penalizing customers with significant prewinter arrearages from enjoying winter protection during the transition back to WTR's.

— encourage utilities to strive for frequent and ongoing prewinter communication with customers in arrears in order to direct them to appropriate payment plans.

— regardless of the extended payment plan offered, require the utilities to devise payment schedules enabling customers to reach a zero balance prior to the next winter period.

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— strengthen the role of the Consumer Assistant in monitoring requests for disconnection and safeguarding company adherence to PUC consumer rules and procedures.

— open a generic docket to review and strengthen the existing WTR's by encouraging utilities to offer a wide menu of extended payment plans. A menu of optional plans will enable all customers to negotiate a satisfactory payment arrangement thereby ensuring winter protection eligibility, while enabling the low income needy to maintain a high degree of budgetary flexibility.

COMMISSION ANALYSIS

"**[1, 2]**" This docket was initiated to consider whether Exeter and Hampton's request for a waiver from Puc 303.08 (k)(2), (3) and (6) should be approved for a sixth consecutive year.

In DRM 81-374, the commission stated that WTR's provide important protection by alleviating fears of shut-offs which may threaten life or health. The commission also recognized the difficulty of measuring the potential effect on accounts receivable and bad debt in implementing the program.

The commission notes that E & H was concerned that WTRs would encourage accumulating debt, result in increased receivables and bad debts, and discourage communication with customers and implementation of special payment plans. This concern for arrearages was reiterated in DRM 82-304, when the company opposed the adoption of the $300 arrearage limit for heating customers on the grounds that it would allow the accumulation of large arrearages, which would be difficult to pay off.

Following due consideration of these and other issues the commission in DRM 83-31 decided to postpone further amendments of WTR's pending appropriate data collection and empirical investigation. However, the commission entertained requests for waiver of existing WTR's where such experimental programs could provide additional data in helping establish a regulatory approach most consistent with the long term public interest.

A comparison of E & H's ESP program with the prior WTR period clearly demonstrates that in the absence of interest charges on existing residential arrearages as asserted by the company counsel, the company has embarked upon an aggressive disconnect policy designed to limit both bad debt and arrearages.

The commission's concern is to balance the cost of some erosion of WTR protection by E & H's customers, against the benefits that might accrue to the company from promoting the ESP program.

The ESP empirical data demonstrate that there has been substantial erosion of customer protection in terms of higher frequencies of temporary and permanent disconnects issued, increases which the commission believes are in no way warranted by the rise in the residential customer base. Moreover, the commission is concerned about the number of permanent disconnections authorized by the company following arrearages of less than twenty-five or fifty dollars. Further, despite serving only 5.84% of New Hampshire's residential electric utility customers, the company has consistently pursued proportionally much higher levels of both temporary and permanent disconnects. The commission does not believe that residential customers in E & H's service territory are any more recalcitrant than elsewhere in New Hampshire, and thus such measures may not be called for.

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The commission, while applauding E & H's very favorable ratio of bad debt to operating revenues, believes there is little additional room for improvement. Thus the ESP program is unlikely to precipitate any further benefits.

Recognizing the exigencies of time, and that former ESP customers with prewinter arrearages, may have planned to maintain their winter protection by enrolling in the program once again, the commission is unwilling to reject the waiver for 1988-89 at this late date. However, the clear erosion of customer protection experienced by E & H's residential customers suggest that future waivers on behalf of the ESP program are unlikely to be approved.

The commission believes that the empirical data and experience gathered by the ESP experimental program over the last five years may be useful in suggesting amendments and rectifying problem areas within the existing WTRs. Thus, the commission intends to open a

generic docket on Winter Termination Rules to review these findings and identify a regulatory approach that is most consistent with the public interest in the long run.

In order that the Consumer Assistance office be better able to evaluate each disconnection request, we will require that the company submit requests for disconnection in writing accompanied by the following information: customer name, age category (over or under 65) and arrearage amount.

Our order will issue accordingly.

ORDER

WHEREAS, Exeter and Hampton has sought and received a temporary waiver from Puc 303.08, the arrearage provisions of the Winter Termination Rules for the past five years; and

WHEREAS, Exeter and Hampton is seeking a continuation of the temporary waiver for the period December 1, 1988 to December 1, 1989; and

WHEREAS, Exeter and Hampton's residential customers have experienced an erosion of winter protection arising from the program; and

WHEREAS, Exeter and Hampton customers with prewinter arrearages may suffer undue hardship from a rejection of the current waiver request; and

WHEREAS, the empirical data and findings following the experimental ESP program will facilitate an evaluation of existing winter protection; and

WHEREAS, the commission wishes to bolster the consumers `safety net', by strengthening the disconnect review procedures carried out by the Consumer Assistance Office; it is hereby

ORDERED, that Exeter and Hampton be granted a temporary waiver from Puc 303.08 (k)(2),(3) and (6), the arrearage provision of the Winter Termination Rules for only one more year; and it is

FURTHER ORDERED, that beginning December 1, 1988 all requests for disconnect submitted for approval to the Consumer Assistance Office be in writing, and should include the consumers name, age category (over or under 65) and arrearage amount.

By order of the Public Utilities Commission of New Hampshire this fourteenth day of October, 1988.

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NH.PUC*10/19/88*[52066]*73 NH PUC 418*Hampton Water Works Company

[Go to End of 52066]

73 NH PUC 418

Re Hampton Water Works Company

DR 87-255
Supplemental Order No. 19,201

New Hampshire Public Utilities Commission

October 19, 1988

ORDER approving a settlement agreement resulting in a stipulated level of test year operating revenues, expenses, rate base, and rate of return for a water utility.

RATES, § 595 — Water — Settlement agreement — Grounds for approval — Reasonableness.

[N.H.] A settlement agreement, which resulted in a stipulated level of test year operating revenues, expenses, rate base, and rate of return for a water utility, was approved where the commission found that the settlement established just and reasonable rates and was in the public good; the settlement provided for (1) an overall rate of return of 11.22%, which would remain in effect without change for a step adjustment increasing base rates across the board, (2) a return on common equity of 12.03%, (3) elimination of a minimum consumption allowance and the associated quarterly customer billing, and (4) a surcharge applicable to all customer bills to recoup over a twelve-month period a revenue deficiency between previously authorized temporary rates and the permanent rates established pursuant the settlement.

APPEARANCES: Dom S. D'Ambruoso, Esquire of Ransmier and Spellman for Hampton Water Works Company; Joe Rogers, Esquire for the Consumer Advocate; and Mary C. M. Hain, Esquire for the Staff of the New Hampshire Public Utilities Commission (Commission).

By the COMMISSION:

REPORT

This report addresses proposed revisions to Hampton Water Works Company's permanent rates. The report discusses the procedural history, sets forth the stipulation of the parties, and the commission analysis, and authorizes rates at the stipulated level.

I. *Procedural History*

On February 5, 1988 Hampton Water Works Company (HWW) filed with the Commission proposed revisions to Eleventh Revised pages 12, 13, 14, and 15 of its Tariff No. 7 — Water, to be effective March 5, 1988, providing for various changes in the terms and conditions of service in Tariff No. 7 and providing for a rate increase calculated to yield an increase in annual revenues of $597,000 or approximately a 27.53% increase (petition). This petition was based upon a test year ending June 30, 1987.

The petition also requested temporary rates pursuant to the provisions of RSA 378:27 at existing rate levels during the interim of the proceedings and until permanent rate levels were established. By its Order No. 19,029 (March 4, 1988) the commission suspended the proposed effective date of the rate filing, and scheduled a hearing on the temporary rate request and a prehearing conference on the proposed permanent rates for April 12, 1988. A duly noticed hearing on the matter of temporary rates was held on April 12, 1988 at the Commission. Report and Supplemental Order No. 19,093 was issued May 12, 1988 (73 NH PUC 223) fixing HWW's

current rates and charges as set forth in its Tariff No.7 as temporary rates effective with all service rendered on and after the

date of the order.

Pursuant to the procedural schedule set forth on page 3 of the Report accompanying Supplemental Order No. 19,093, HWW, on June 7, 1988, filed revised tariffs, testimony and exhibits updating its test year to the twelve month period ending April 30, 1988.

On September 1, 1988 Eugene F. Sullivan, Finance Director — NHPUC filed his Testimony and Exhibits recommending a rate increase. The revenue requirement was calculated using an average test year rate base of $6,205,164 and an 11.15% cost of capital to yield an increase in annual revenues of $117,532. Interest synchronization was applied to the investment tax credit, this methodology applies a cost of capital or a rate of return to investment tax credits in direct proportion to the capital structure of the Company. In this way all investors derive a benefit from zero cost capital and the ratepayers derives the benefit of the additional implied interest deduction.

Subsequent to the temporary increase, the Commission Staff and the State Consumer Advocate sought information from HWW through data requests. Settlement conferences were conducted among the commission staff, the state consumer advocate and the company, seeking to reach agreement on certain issues related, *inter alia*, a Level of Test Year Operating Revenues, Expenses, Rate Base, Rate of Return, Rate Structure and a Step Increase in Utility Operating Revenues. The parties entered into an agreement on all issues.

II. *Stipulation Agreement*

The agreement was offered in total and a rejection of any portion by the commission negated the effect of the entire agreement.

The settlement agreement results in a stipulated level of test year operating revenues, expenses, rate base and rate of return. The overall adjusted test year utility operating income was established at $732,558, the total rate base upon which HWW shall be allowed to earn a return is $6,529,038. The parties have stipulated to an overall rate of return of 11.22% and a return on common equity of 12.03%. The parties further agreed that the stipulated rate of return of 11.22% shall remain in effect for the step adjustment without change.

Hampton Water Works agreed to file a compliance tariff providing for the stipulated rate increase of $224,162, these tariff pages to become effective for bills rendered on and after November 1, 1989.

The parties agreed to allow HWW a step increase to its permanent rates effective with bills rendered on or after November 1, 1989. The step adjustment shall be collected by increasing the HWW's base rates across the board.

The step adjustment shall consist only of adjustments to the components of rate base as set forth in the Stipulation Agreement, Exhibit No. 21 and adjustments, to utility operating income as a result of adjustments to revenues, property taxes, current and deferred income taxes and

depreciation expenses only as these items are related to the net plant in service.

The parties further agreed to the deletion of the minimum (600 cubic foot) consumption allowance and the quarterly customer billing associated with the minimum consumption allowance.

HWW shall collect the revenue deficiency between the temporary rates as allowed by Order No. 19,093 (May 12, 1988) and the permanent rates as allowed in this Report and Order, by means of a surcharge applied to all customer bills.

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The surcharge shall recoup the amount over a twelve month period commencing with service rendered on November 1, 1988.

HWW has not waived, and therefore reserves, its right to file a full rate proceeding. However, the filing of a request for a rate increase by HWW before the effective date of this step adjustment shall make the step adjustment null and void.

The staff and HWW supported the step increase by facts on the record showing that the step adjustment would be easily verifiable, equitable, and necessary due to prudent changes in plant investment and growth in the customer base.

III. *Commission Analysis*

The commission, upon review of the settlement finds that the settlement is in the public good and that it establishes just and reasonable rates. The Commission finds that the revenue requirement as developed is supported by the evidence and is just and reasonable, therefore, we accept it for resolution of this particular petition in accordance with the agreement. The proposed annual increase of $224,162, will be effective as of November 1, 1989, pursuant to the stipulation. HWW shall file appropriate surcharge tariffs and supporting information on or before November 1, 1988.

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 Stipulation Agreement, marked Exhibit No. 21, is hereby accepted by the Commission; and it is

FURTHER ORDERED, that Eleventh Revised Pages 12, 13, 14 and 15 of Hampton Water Works Company Tariff No. 7 — Water, suspended by Order No. 19,029 (March 4, 1988), are hereby rejected; and it is

FURTHER ORDERED, that Hampton Water Works Company shall file revised tariff pages to recover an increase in gross revenues of $224,162, through the rate schedules as set forth in Stipulation Agreement, marked Exhibit No. 21; and it is

FURTHER ORDERED, that such revised tariff pages shall bear the effective date of the date of this Report and Order, and shall bear all further designation as set forth in this Commission's Tariff Filing Rules; and it is

FURTHER ORDERED, that a Step Increase in Utility Operating Revenues in accordance with the scope and provisions of the Stipulation Agreement, marked Exhibit No. 21, shall be filed by September 29, 1989 for bills rendered on or after November 1, 1989; and it is

FURTHER ORDERED, that Hampton Water Works shall file a compliance tariff providing for the rate increase stipulated herein and providing for elimination of the minimum consumption allowance; and it is

FURTHER ORDERED, that Hampton Water Works Company shall collect the revenue deficiency between the temporary rates as allowed by Order No. 19,093 (May 12, 1988) and the permanent rates as allowed in this Report and Order, by means of a surcharge applied to all customer bills for service rendered; and it is

FURTHER ORDERED, that Hampton Water Works Company shall file a tariff supplement calculating the temporary rate surcharge and providing for its recoupment for a period of twelve (12) months commencing November 1, 1988.

By order of the Public Utilities

Commission of New Hampshire this nineteenth day of October, 1988.

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NH.PUC*10/19/88*[52067]*73 NH PUC 421*Public Service Company of New Hampshire

[Go to End of 52067]

73 NH PUC 421

Re Public Service Company of New Hampshire

DE 88-142
Order No. 19,202

New Hampshire Public Utilities Commission

October 19, 1988

ORDER authorizing electric utility to expand service territory.

SERVICE, § 198 — Extensions — Expansion of service territory — Electric.

[N.H.] An electric utility was authorized to provide service to towns in areas not previously within the service territory of any utility where provision of such service was determined to be in the public good.

By the COMMISSION:

ORDER

WHEREAS, on September 26, 1988, Public Service Company of New Hampshire, (PSNH) filed with this commission, a petition pursuant to RSA 374:22-a *et seq.*, to establish as service territories the Towns of Success, Crawford's Purchase, Bean's Grant, Chandler's Purchase, and Thompson and Meserve's Purchase, New Hampshire; and

WHEREAS, in accordance with RSA 374:2-a(II), certain areas within the State not requiring electric service have not been assigned to any company, with the understanding that such areas would be left for future determination; and

WHEREAS, the subject towns are specified as areas not within the service territory of any company, and PSNH now makes application to establish these areas as part of the company's service territory; and

WHEREAS, Public Service Company of New Hampshire avers that establishing the subject towns as PSNH service territory is consistent with existing service territory, natural geographic boundaries, and the orderly development of the region; and

WHEREAS, in respect to the towns of Crawford's Purchase, Bean's Grant and Chandler's Purchase, in NHPUC Order No. 18,859, issued September 30, 1987 in Docket No. De 87-175 (72 NH PUC 474), PSNH was authorized to construct a 34.5 KV line in those towns for the purpose of serving the Cog Railway; and

WHEREAS, PSNH further states that as evidence of voluntary agreement defining service territory, a letter of concurrence dated September 23, 1987 by the New Hampshire Electric Cooperative, Inc., previously submitted in NHPUC Docket No. DE 87-175, is offered as Exhibit B; and

WHEREAS, the commission's investigation finds the request to establish the listed towns as PSNH service territory 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 a hearing on the matter before this commission no later than November 11, 1988; and it is

FURTHER ORDERED, that the petitioner effect said notification by

publication of this order once in a newspaper having general circulation in the affected region and once in *THE UNION LEADER.* Such publications to be no later than October 28, 1988 and documented by affidavit to be filed with this office on or before November 18, 1988; and it is

FURTHER ORDERED, that Public Service Company of New Hampshire, file new and/or revised Commission Service Territory Maps within 60 days from the issuance of this order,

reflecting the above changes in service areas brought about by this revision in franchise boundaries; and specifying thereon that the maps are effective on the date hereof by authority of the above NHPUC Order No.; and it is

FURTHER ORDERED, *NISI* that authority be granted, pursuant to RSA 374:2-a *et seq.*, to Public Service Company of New Hampshire to serve the Towns of Success, Crawford's Purchase, Bean's Grant, Chandler's Purchase, and Thompson and Meserve's Purchase, New Hampshire; 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 provide above or the commission otherwise directs prior to the proposed effective date.

By order of the Public Utilities Commission of New Hampshire this nineteenth day of October, 1988.

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NH.PUC*10/20/88*[52068]*73 NH PUC 422*Kearsarge Telephone Company

[Go to End of 52068]

73 NH PUC 422

Re Kearsarge Telephone Company

DR 87-110
Order No. 19,203

New Hampshire Public Utilities Commission

October 20, 1988

MOTION for rehearing of an order authorizing a rate of return on common equity for an independent local exchange telephone carrier; denied.

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1. RETURN, § 26.4 — Factors affecting reasonableness — Attraction of capital; maintenance of credit; cost of money — Cost of equity capital — Rate of return on public utility bonds — Telephone.

[N.H.] A return on common equity of 10.77% authorized for an independent local exchange telephone company was affirmed as reasonable, although the authorized return was below the rate of return on public utility bonds; the commission rejected a contention that the authorized equity return was inconsistent with applicable standards and principles because it was below the yield recorded on various bond indexes during a specified month, and noted that care must always be exercised in the use of such data, because the yield on the index was subject to considerable variation over time, and bond yields also varied considerably within a credit rating class due to differences in indenture provisions, techniques of measurement, and other factors. p.

424.

2. RETURN, § 15 — Reasonableness — Procedure — Evidence — Offer of evidence — Basis for decision.

[N.H.] A return on common equity of 10.77%, which was established for an independent local exchange telephone carrier, was affirmed where the commission had reached its decision authorizing the return after admitting all evidence provided by the utility, weighing

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the merits, and considering the usefulness of the evidence for purposes of the proceeding, because the commission was required to consider, but was not required to accept as true, all evidence offered by the parties. p. 426.

3. RETURN, § 45 — Factors affecting reasonableness — Risks or hazards of enterprise — Monopoly and competition factors — Telephone — Independent company.

[N.H.] A claim that the commission failed to consider the greater business risk of an independent local exchange telephone carrier relative to the sample companies used for purposes of comparison by the commission staff, and thus failed to exercise fair and enlightened judgment with regard to all relevant facts, was rejected where the commission found that the credit quality of the LEC's parent was essentially irrelevant in determining the appropriate return on equity of the LEC, and that there was no indication that the LEC had suffered losses from competitive forces or was in any other way experiencing greater business risk compared either to other small telephone companies in the state or to the companies in the staff sample. p. 426.

4. RETURN, § 117 — Telephone — Independent company — Confiscatory or extortionate rate.

[N.H.] The commission refused to rehear an order that established a return on common equity of 10.77% for an independent local exchange telephone company, because the authorized return was just and reasonable, and was not confiscatory to the utility or extortionate to the consumer. p. 427.

5. RETURN, § 10 — Basis for computation — Book cost of property — Price to book value ratio — Telephone — Independent carrier.

[N.H.] In affirming a return on common equity of 10.77% established for an independent local exchange telephone company, the commission held that it was not obligated to authorize a return on equity designed to maintain the existing price to book value ratio, and possibly was precluded by statute from authorizing such a rate; because statutory authority did not prescribe a formula to determine a just and reasonable rate, the commission could use any method to reach such a result. p. 427.

APPEARANCES: As Previously noted.

By the COMMISSION:

REPORT

On September 15, 1988, Kearsarge Telephone Company (Kearsarge or company) moved for rehearing of commission report and order no. 19,154 pursuant to RSA 541:3 and 4. Upon consideration of said motion, this Report and attached Order reaffirms the position of the commission and denies the company's motion for rehearing.

Hearings on the merits were held on May 16, 17 and 19, 1988. The company and staff had stipulated to all matters with the exception of the rate of return on common equity. The company originally proposed a rate of return on equity of 15.91% to 16.91%. At hearing, however, the company stated it would be willing to accept an increase in revenues equivalent to a return on equity of 13.82% with a return on rate base of 10.88%. The commission rejected these proposals and, based on staff testimony, set a rate of return on equity of 10.77% which resulted in an increase in revenues to the company of $70,810.

On September 15, 1988 the company moved for a rehearing of this matter, arguing that the order is unlawful and unreasonable on the following grounds:

1. The company contends that the end result of the rate order is unjust and unreasonable under the standards of *Federal Power Commission v. Hope Nat. Gas Co.,* 320 U.S. 591, 51 PUR NS 193, 88 L.Ed. 333, 64 S.Ct. 281 (1944). It argues that a rate of return on common equity of 10.77% is below the yield on utility bonds which is patently unreasonable in light of the greater risk associated with an equity interest; that the company only received an annual revenue increase of $70,817 while experiencing annual revenue reductions of $73,000 in Subscriber Plant Factor (SPF); and that the commission failed to consider not only a rate of return at the time of the order but the needs of the company for a reasonable time thereafter.

2. The company contends that the commission failed to exercise “fair and enlightened judgement having regard to all relevant facts.” *Bluefield Water Works Improv. Co. v. West Virginia Pub. Service Commission,* 262 U.S. 679, 692, PUR1923D 11, 67 L.Ed. 1176, 43 S.Ct. 675 (1923). The company claims that the commission failed to consider certain relevant evidence of the company's particular circumstances, specifically, the greater business risk of Kearsarge relative to the risk of the sample companies used by the staff in its discounted cash flow (DCF) analysis.

3. The company contends that the commission based its conclusion on erroneous findings of the fact relative to the company's position on maintaining the existing ratio of market price to book value.

COMMISSION ANALYSIS

[1] 1. The claim that the commission has authorized a return on equity that is unjust, unreasonable, and in violation of a fundamental financial principle because it is below the rate of return on public utility bonds is based on erroneous facts and faulty reasoning. The company's contention is based on the observation that the authorized return on common equity is below the yield recorded on various bond indexes during October 1987.

Because there is considerable variation in bond yields within a credit rating class due to differences in indenture provisions, techniques of measurement, and other factors, care must

always be exercised in the use of such data. In addition, the yield on the index itself is subject to a considerable amount of variation over time. For example, the Moody's triple-A public utility bond index yield of 10.9% recorded in October of 1987 is far from representative of the index yield over the recent past (exhibit 20). The 10.9% is the highest yield recorded by the index in question since October 1985. It had, in fact, averaged 9.23% from October 1985 to October 1987 and had been as low as 8.23% during the period. Since October 1987 the index has averaged 10.27% and is currently at 10.66%. Such variability requires the calculation of risk premiums over an extended period of time that encompasses a range of economic conditions and credit market circumstances. The claims made by the company, in contrast, represent a inadequate risk premium analysis based on a single data point comparison which contradicts the requirements of a risk premium analysis espoused by leading authors on regulatory matters (R. Morin, Utilities Cost of Capital at 182 (1984), J. Bonbright, A. Danielson, D. Kamerschen, Principles of Public Utility Rates at 323 (2nd ed. 1988) and as implemented by the Company's own cost of capital witness (Exhibit 13).

The comparison of the authorized return

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on equity with the Dow Jones utility bond index yield suffers from the same problems as previously mentioned in reference to the Moody's triple-A public utility index and has an additional deficiency. The Dow Jones index represents the arithmetic mean of the yield to maturity on ten public utility bonds each with unique indenture provisions. The index represents bonds of widely diverse ratings (double-A to triple-B,) maturities (eleven to 24 years), coupon rates (7.0% to 9.75%) and industry involvement (8 electric and 2 telephone). As with the Moody's triple-A index the wide diversity of bond characteristics comprising the Dow Jones index militates against its use in casual risk premium comparisons.

No one denies that ". . . common equity capital is more risky than debt from an investor's standpoint and that investors require higher returns on stocks than on bonds to compensate for the additional risks." (Motion for rehearing p. 2). However, the financial principle that the commission has allegedly violated does not state nor does it imply that every common stock in the market must yield or be expected to yield to its holder more than that required of every bond in the market. If such were the case, the least risky of stocks would yield or be expected to yield a return higher than the most risky bond available. Clearly that is not the case nor does any financial analyst assert it is. Bonbright (p. 322) restates the principle in a manner which more accurately reflects its true meaning: "Basically, the theory suggests that the required rate of return is higher for riskier securities than less risky securities. Accordingly, the equity *of a company* has a higher required or expected return than *its* debt." (Emphasis added). The correct comparison, therefore, is that of the authorized return on equity for Kearsarge with the return required on its newly issed debt. Unfortunately, Kearsarge has not recently issued any publicly traded debt that could form the basis for a proper comparison. Presumably, a proxy debt cost could be calculated to represent the company's risk as it would be perceived by the investment community, but no such analysis has been presented by the company.

The Company asserts that the $70,817 rate increase is below the annual reduction of $73,000 annual interstate toll revenues due to an annual SPF reduction, and that the loss is absolute and

can only be recovered through local service rates. The commission finds that argument and proposition to be completely erroneous and misleading. There are many factors involved in analyzing a rate filing and no one item of revenue can be examined in isolation. We note from company records that interstate toll revenues rather than decreasing by $73,000 have actually grown by $101,734 for the twelve months ended June 1988. The Company and staff made pro forma adjustments to take the SPF shift into account in order to arrive at the revenue requirement. Therefore, the shift in revenues has already been factored into the increase. Without that change the increase in revenue requirements would have been nil.

The company's assertion that the commission did not take account of a reasonable time period is equally without merit. In *New England Teleph. & Teleg. Co. v. New Hampshire,* 113 N.H. 92, 98 PUR3d 253, 302 A.2d 814 (1973) the New Hampshire Supreme Court held that the commission must fix a rate which will meet constitutional standards at the time the rate is fixed and for a reasonable time thereafter "[i]f the existence of attrition

can be established by the company . . ." *Id.* at 97. The Court defined attrition as the result of operating expenses or plant investment increasing more rapidly than revenues. Such attrition would invalidate the results reached using an historical test year to set rates. The company, however, did not establish attrition. Furthermore all of the return on equity procedures contained in the record are designed to provide a recommendation relevant not only for the circumstances currently prevailing but under a wide range of changing circumstances that might develop in the foreseeable future.

On these grounds the commission determines the claims of the company to be without merit. The 10.77% equity return authorization is not inconsistent with the standards of *Hope;* nor is it in violation of the cost of capital principles articulated by *Morin* and *Bonbright* or the fundamental risk-return principle.

"[2, 3]" 2. The Company claims that the commission failed to consider Kearsarge's greater business risk relative to the sample Companies used by the staff witness and thus failed to exercise "fair and enlightened judgement having regard to all relevant facts." *Bluefield* at 692. The commission disagrees. While *Bluefield* requires the commission to consider all of the evidence offered by the parties, it does not require the commission to accept as true all such evidence as proffered by those parties. *New England Teleph. & Teleg. Co. v. New Hampshire,* 104 N.H. 209, 236, 44 PUR3d 498, 183 A.2d 237 (1962). In its report the commission states that "based on all of the evidence before it that a return on equity of 10.77% as recommended by staff ... is just and reasonable..." p. 32. Thus, the commission admitted all of the evidence provided by the company, weighed its merits, considered its usefulness for the task at hand, and arrived at a decision.

The company's criticism of the staff credit evaluation and the commission use of it is misplaced. The credit quality of Kearsarge's parent TDS is essentially irrelevant in determining the appropriate return on equity of Kearsarge. The commission staff has characterized Kearsarge as a triple-A to double-A plus credit rating based on its coverage ratio and leverage in relation to the Standard and Poor's guidelines for its level of business risk. (Exhibit 21, p. 8). The Standard

and Poor's rating system defines Kearsarge as a Group I business risk, a fact that was used by Staff in its risk evaluation and not convincingly contested by the company. For companies with that level of business risk, a pretax fixed charge coverage ratio of 4.0 or more and a debt ratio of 45% or less qualifies the company as a triple A credit risk by the Standard & Poor's guidelines. Staff also provided evidence, undisputed by any party, that Kearsarge has the requisite financial statistics to qualify for the triple A rating. It is irrelevant, therefore, to the commission findings whether Kearsarge is characterized as a triple A minus to double A plus credit risk or as a small telephone company with a level of business risk commensurate with Standard and Poors Group I and a level of financial risk characterized by a pretax coverage ratio of 4.0 or more and a debt ratio of 45% or less.

The commission monitors each and every company under its jurisdiction and is well aware of the relevant operating conditions in each industry. We are cognizant of the investment in new plant which has been included in the rate base and note that since the Company's last rate case in 1976, it has earned a rate of return in excess of its allowed cost of capital, with the exception of the test year. There is

nothing in the record that verifies that the Company has suffered losses from competitive forces or is in any other way experiencing greater business risk compared either to other small New Hampshire telephone companies or to the companies in the staff sample. Most of the small independent telephone companies in the state had similar percentages of toll revenue as Kearsarge. All other companies have lost customer premises equipment (CPE) and inside wire local revenues as both of these items have been deregulated for the industry. We would point out that the CPE option is still open to the Company on a competitive basis. The only change has been the elimination of the monopoly of requiring customers to use company equipment. Finally, the installations of digital equipment and fiber optics are expected to increase not only the pricing opportunities for the Company but enhance its revenues through the offering of new custom calling features. TDS acknowledged these opportunities in its Northeast Region in its 1987 annual report to stock holders: “nearly 60% of these customers are now using touch tone phones, with many more using various custom calling features as sales growth in this area exceed 40%.” (p. 19)

[4] 3. The company argues that the commission made an error of fact when it stated that the company was recommending a rate of return designed to maintain the price to book ratio of 1.60. The commission agrees with the company (Trial Brief p. 16) that it has the responsibility to “examine all of the data and methodologies presented by Kearsarge and make specific and detailed basic findings of fact about the data presented before reaching its ultimate conclusion.” In doing so, the commission finds that despite the company's contention that the return on equity should be set so as to be consistent with a price to a book value ratio of 110 to 125 (Tr. II, p. 31, 37), the use of book value rather than the market price of DCF formula provides a result that is in fact designed to produce the earnings required by investors to satisfy their rate of return requirements at the existing price to book value ratio. The commission is not obligated to authorize a return on equity designed to maintain the existing price to book value ratio (report, p. 24) and may in fact be precluded from authorizing such a rate under RSA 378:7 and *New*

England Teleph., 104 N.H. 229, 232 (1962).

[5] In conclusion, the commission must set rates that are "just and reasonable", RSA 378:7. The law does not preclude the commission from receiving and considering any evidence which may be pertinent and material to the determination of a just and reasonable rate (RSA 378:28). This just and reasonable standard creates a zone of reasonableness within which it must set rates which are not constitutionally confiscatory to the company or constitutionally extortionate to the consumer. *New England Teleph. and Teleg. Co. v. New Hampshire*, 104 N.H. 229, 232, 44 PUR3d 498, 183 A.2d 237 (1962). The commission has the legislative discretion to determine the method to be used to determine rates. *Los Angeles Gas & E. Corp. v. California R. Commission*, 289 U.S. 287, 304, PUR1933C 229, 77 L.Ed. 1180, 53 S.Ct. 637 (1933). Statutory authority does not prescribe a formula to be followed in determining a just and reasonable rate. The commission may, therefore, use any method to reach such a result.

In the case at hand the commission has reached a just and reasonable return on equity authorization which is neither confiscatory to the company nor extortionate to the consumer and will therefore

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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 Kearsarge Telephone Company's motion for rehearing be, and hereby is, denied.

By Order of the Public Utilities Commission of New Hampshire this twentieth day of October, 1988.

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[Go to End of 52069]

73 NH PUC 428

Re Northern Utilities, Inc.

DR 88-155
Order No. 19,205

New Hampshire Public Utilities Commission

October 27, 1988

ORDER approving interruptible gas service contract.

RATES, § 380 — Gas — Special contract rate.

[N.H.] The commission approved a special contract outlining the terms and conditions whereby interruptible gas service would be provided to an electric company, finding the contract to be in the public good.

By the COMMISSION:

ORDER

WHEREAS, on October 7, 1988, Northern Utilities, Inc. filed with this commission its Special Contract No. 76, said contract outlining the terms and conditions under which that company would provide interruptible gas service to General Electric Company; and

WHEREAS, the commission finds that issuance of said contract is in the public good; it is therefore

ORDERED, that Special Contract No. 76 be, and hereby is, approved for effect on the date of this order; and it is

FURTHER ORDERED, that the terms and conditions of said contract be amended, no later than September 22, 1989, to comply with the provisions of the Stipulation and Agreement embodied in commission order no. 19,181 (73 NH PUC 374).

By order of the Public Utilities Commission of New Hampshire this twenty-seventh day of October, 1988.

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NH.PUC*10/27/88*[52070]*73 NH PUC 428*Keene Gas Corporation

[Go to End of 52070]

73 NH PUC 428

Re Keene Gas Corporation

DR 88-143
Order No. 19,206

New Hampshire Public Utilities Commission

October 27, 1988

ORDER establishing a winter cost of gas adjustment for a gas distribution utility.

AUTOMATIC ADJUSTMENT CLAUSES, § 15 — Authorization, reasonableness, and scope of application — Cost recovery clauses — Energy cost clauses — Direct costs — Winter

adjustment — Gas distribution utility.

[N.H.] A winter cost of gas adjustment, which incorporated a decrease in the rate allowed for the previous winter period, was approved for a gas distribution utility that expected sales for the winter period to remain

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fairly constant in comparison to the previous winter period, where customer growth, which had been minimal, was expected to stay at the same level and weather conditions were expected to be normal for the period, so that no adjustment to sales volumes was necessary.

APPEARANCES: Kenneth W. Wood for Keene Gas Corporation; Eugene F. Sullivan, Finance Director for Commission Staff.

By the COMMISSION:

REPORT

On September 28, 1988, Keene Gas Corporation, (the Company), a public utility in the business of distributing gas within the State of New Hampshire, filed with this Commission revisions to its tariff which provided for a winter period 1988-1989 Cost of Gas Adjustment (CGA) for effect November 1, 1988. The filing requests a rate of $(0.0629)/therm, excluding the N.H. State Franchise Tax, which is a decrease from the rate of $0.0147/therm allowed by the Commission for the 1987-1988 winter period. The proposed CGA of $0.3585/therm is a reduction from the base rate of $0.4214/therm excluding N.H. Franchise Tax.

A duly noticed public hearing was held at the Commission's office in Concord, N.H. on October 14, 1988.

The Company Vice President, Kenneth W. Wood, Company witness, stated estimated sales for the 1988-1989 winter period are expected to remain fairly constant in comparison to the previous winter period. Customer growth has been minimal and is expected to remain at approximately the same level. Weather conditions are expected to be normal for the period, therefore, the Company does not feel that an adjustment to sales volumes is required or necessary.

Mr. Kenneth W. Wood, the Company Vice President and General Manager testified to the Company's continued diligence in purchasing gas at the best price while assuring that the Company has available product to meet its requirements. Mr. Wood testified that the Company had during the summer months of 1988 contracted and/or prepaid at summer prices supplies that would meet normal winter requirements to be drawn down during the 1988-1989 winter period. It was also agreed that in the event of unusual circumstances occurring additional product would be available.

Mr. Wood explained there has not been any definite progress on the proposed construction of the Champlain Project, a natural gas pipeline which is proposed to pass within 2 1/2 miles of Keene's gas plant. It was explained by Mr. Wood that Keene Gas contacts Champlain engineers

regularly expressing continued interest in a pipeline which would make natural gas available to the Keene area.

The commission finds that Keene Gas Corporation's CGA rate of $(0.0629)/therm is just and reasonable, therefore accepts such as filed.

Our Order will be issued accordingly.

ORDER

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

ORDERED, that 10th Revised Page 26, Superseding 9th Revised Page 26, of Keene Gas Corporation, Tariff, NHPUC No. 1 — Gas, providing for a Cost of Gas Adjustment of $(0.0629)/therm for the

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period of November l, 1988 thru April 30, 1989 be, and hereby is, approved; and it is

FURTHER ORDERED, that the revised tariff pages approved by this order become effective with all billings issued on or after November 1, 1988; and it is

FURTHER ORDERED, that public notice of this Cost of Gas Adjustment be given by one time publication in newspapers having general circulation in the territories served; and it is

FURTHER ORDERED, the above rate is to be adjusted by a factor of approximately 1% according to the utilities classification in the Franchise Tax Docket DR 83-205, Order No. 15,624.

By order of the Public Utilities Commission of New Hampshire this twenty-seventh day of October, 1988.

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NH.PUC*10/27/88*[52071]*73 NH PUC 430*Concord Natural Gas Corporation

[Go to End of 52071]

73 NH PUC 430

Re Concord Natural Gas Corporation

DR 87-243
Order No. 19,207

Re Gas Service, Inc.

DR 87-244
Order No. 19,207

Re Manchester Gas Company

DR 87-245

Order No. 19,207

New Hampshire Public Utilities Commission

October 27, 1988

REPORT regarding an investigation of permanent rates and order approving stipulated permanent rates of three gas distribution utilities in the process of merging.

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1. RATES, § 374 — Gas — Blocks or steps — Distribution utilities — Merger.

[N.H.] The commission approved a stipulation agreement establishing permanent rates of three gas distribution utilities, which were in the process of merging; the stipulation allowed the utilities to collect specified base revenue increases by raising their base rates across the board (base rates were defined as the rates that would be produced as a result of the utilities' merger and the consolidation of their rates), and provided for a step adjustment to increase across the board the permanent rates of the merged utility. p. 434.

2. RATES, § 194 — Unit for rate making — Postmerger rates — Time of determination — Gas distribution utilities.

[N.H.] The commission approved a procedure to calculate postmerger rates of a gas distribution utility, pursuant to a stipulation agreement establishing rates for three gas distribution utilities that were in the process of merging, whereby the determination of rates for the merged utility would begin, not with the consolidation, but with the determination of individual company base rates that were consistent with stipulated base revenue increases; the resulting base rates could then be used to determine the appropriate level of recoupment of a temporary rate revenue deficiency. p. 434.

APPEARANCES: Jacqueline Fitzpatrick, Esquire and David W. Marshall, Esquire of Orr and Reno, P.A., for Manchester Gas Company; and Mary C.M. Hain, Esquire on behalf of the Commission Staff.

By the COMMISSION:

REPORT REGARDING PERMANENT
RATE INVESTIGATION

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This report addresses petitions by Manchester Gas Company, Concord Natural Gas Corporation, and Gas Service, Inc. for permanent rates. The report discusses the procedural history, sets forth the stipulation of the parties, findings of facts, and analysis, and authorizes rates at the stipulated level.

I. *Procedural History*

On January 28, 1988, Concord Natural Gas Corporation (Concord) filed revised tariff pages

designed to increase gross annual revenues by $589,682 net of the cost of gas. On January 28, 1988, Gas Service, Inc. (Gas Service) filed revised tariff pages designed to increase gross annual revenues by $1,081,892 net of the cost of gas. On January 28, 1988, Manchester Gas Company (Manchester Gas) filed revised tariff pages designed to increase gross annual revenues by $970,296 net of the cost of gas.[1(37)] The proposed tariffs would apply to bills rendered on and after February 28, 1988.

On February 11, 1988, the companies filed a petition for temporary rates pursuant to Section RSA 378:27. The petition for temporary rates of Manchester Gas requested that it be allowed to implement rates designed to collect an additional amount of $970,296 annually effective with bills rendered on and after February 28, 1988. The petition for temporary rates of Concord requested that it be allowed to implement rates designed to collect an additional amount of $589,682 effective with bills rendered on and after February 28, 1988. The petition for temporary rates of Gas Service requested that it be allowed to implement rates designed to collect an additional amount of $1,081,892 effective with bills rendered on and after February 28, 1988.

On February 18, 1988, by orders no. 19,012; 19,013; and 19,014 the commission suspended the effective date of the permanent rate tariffs, pursuant to RSA 378:6. On February 25, 1988, the commission entered an order of notice setting a hearing for April 13, 1988 on the following issues, *inter alia:* 1) whether temporary rates should be allowed pursuant to RSA 378:27, 2) whether, under 378:7, the commission is obligated to investigate the petition since the commission has investigated the companies' rates within a two year period of the filing, 3) what procedural schedule would be followed in the permanent rate investigation, and 4) what parties should be allowed to intervene. By our order of notice we required the petitioners to give notice of the matters to the general public by publication and to the individual customer by a bill insert. On March 4, 1988, the commission issued a supplemental order of notice that allowed the companies to use the proposed bill insert notice submitted with their motions dated March 2, 1988.

On April 13, 1988, a hearing was held regarding the above-mentioned issues. The only parties present were the companies, the commission staff, and the consumer advocate. The commission consolidated these cases from the bench. The parties presented a stipulation entitled Temporary Rate Stipulation Agreement dated April 13, 1988, which consisted of an agreement between the companies, staff and consumer advocate recommending that the commission authorize temporary rates for the companies at current permanent rate levels as a disposition of the petition for temporary rates and setting a procedural schedule for permanent rate investigation.

By report and supplemental order no. 19,063 (73 NH PUC 179) dated April 15, 1988, the commission authorized the

companies to implement temporary rates at current permanent rate levels for bills rendered on and after April 15, 1988. The commission also approved a procedural schedule to govern the permanent rate investigation.

The parties held settlement meetings on August 3, 1988, September 6, and September 12, 1988. On September 21, 1988, the parties filed a settlement agreement intended to resolve all the issues in this case. This agreement was supplemented by an oral agreement conveyed to the commission on October 14, 1988 that settled the procedure for the post-merger EnergyNorth Natural Gas, Inc. determination of rates.

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, this section will be divided among the following categories: 1) revenue deficiency, 2) recoupment of the temporary rate deficiency, 3) rate design, 4) cost of service, 5) step adjustment, and 6) nonwaiver.

The companies' original testimony and exhibits proposed an increase in base revenues for Concord, Gas Service, and Manchester Gas of $589,682; $1,081,892; and $970,296, respectively. The staff's original testimony and exhibits supported increases of $425,141; $603,365; and $673,961 for Concord, Gas Service, and Manchester Gas respectively.

A. Revenue Deficiency

The parties agreed that each of the companies was experiencing a revenue deficiency. Thus, the parties agreed that the companies should be allowed the following increases in base revenue: an increase of $477,816 for Concord, and increase of $763,932 for Gas Service, and an increase of $720,090 for Manchester Gas.

For the purpose of calculating the revenue deficiency in this proceeding, the parties agreed to use the following components.

1. Rate of Return

For Concord Natural Gas Company the allowed return on equity shall be 13.77%, the cost of preferred equity shall be 5.50%, the cost of long-term debt shall be 9.48%, and the cost of short-term debt shall be 10.00%. These rates shall be applied to the company's capital structure to produce an overall rate of return of 11.55%.

For Gas Service, Inc., the allowed return on equity shall be 13.77%, the cost of preferred equity shall be 15.99%, the cost of long-term debt shall be 11.50%, and the cost of short-term debt shall be 10.00%. These rates shall be applied to the company's capital structure to produce an overall rate of return of 12.69%.

For Manchester Gas Company the allowed return on equity shall be 13.77%, the cost of preferred equity shall be 7.0%, the cost of long-term debt shall be 10.42%, and the cost of short-term debt shall be 10.00%. These rates shall be applied to the company's capital structure to produce an overall rate of return of 11.91%.

For the Post-Merger EnergyNorth Natural Gas, Inc. the allowed return on equity shall be 13.57%, the cost of preferred equity shall be 15.99%, the cost of long-term debt shall be 10.76%, and the cost of short-term debt shall be 10.00%. These rates shall be applied to the company's

capital structure to produce an overall rate of return of 12.19%.

2. Rate Base

The parties agreed that the rate base would be a 13 month average rate base. It shall be $8,240,059; $21,945,024; and $17,237,880 for Concord Natural Gas Company, Gas Service, Inc., and Manchester Gas Company respectively.

3. Net Utility Operating Income

The parties stipulated that the net utility operating income for Concord Natural Gas Company, Gas Service, Inc., and Manchester Gas Company shall be $636,368; $2,280,629; and $1,577,772 respectively.

B. Rate Design

The parties stipulated that the companies shall be allowed to collect these base revenue increases by increasing the companies' base rates across the board. The settlement agreement defined base rates as the rates that will be produced as a result of the companies merger and the consolidation of their rates.

In the oral agreement supplementing the written stipulation, the parties subsequently agreed that the procedure for determining the rates for the merged company should begin, not with consolidation, but with the determination of individual company base rates which are consistent with the stipulated base revenue increases. The resulting base rates can then be used to determine the level of recoupment allowed during the temporary rate period ending November 1, 1988.

The parties consented to allow Concord Natural Gas Company to convert to BTU billing and eliminate its combined service tariff. It was agreed that the language of Gas Service, Inc.'s tariffs would govern all aspects of the merged company's business. It was agreed that the consolidated rates would be effective with bills rendered on and after November 1, 1988.

C. The Recoupment of Temporary Rate Deficiency.

The parties agreed that the company would be allowed to recoup, by surcharge, the temporary rate revenue deficiency. This deficiency is the difference between a) the revenue actually billed by the company pursuant to the temporary basic rates approved by the commission in report and supplemental order no. 19,063 (April 15, 1988) and b) the revenue the companies would have billed had it charged rates (including independent company (zone) rates during the period October 1 through November 1, 1988) reflecting the permanent rate increase. The surcharge shall be designed to recoup the deficiency over a two year period beginning November 1, 1988 (or as soon thereafter as possible but no later than December 1, 1988) on a per therm basis for all firm customers.

D. Cost of Service

The company agreed to perform a cost of service study to be completed one year from the date of the commission's order in this docket or one year from the date of the commission's order concerning the type of cost of service study to be performed in docket DE 86-208, whichever was later.

E. Step Adjustment

The parties stipulated to allow EnergyNorth Natural Gas, Inc. a step adjustment to its permanent rates effective with bills rendered on or after July 1, 1989. They agreed that the step adjustment shall

be collected by increasing the company's base rates across the board.

The parties stipulated that the step adjustment shall consist only of adjustments to the following components of the revenue requirement:

1. Prudent and reasonable payroll and FICA payroll taxes;
2. Property taxes;
3. Rate base;
4. Deferred taxes and depreciation expenses related only to the rate base adjustment;
5. Revenues;
6. Merger savings;
7. Merger costs; and
8. Reasonable rate case expense.

The parties set forth a detailed calculation of how the step adjustment would be calculated. It would be calculated based on a 13 month average test year. The changes in the rate base would only include changes in gross plant, accumulated depreciation, capital leases, construction work in progress, deferred taxes, and contribution in aid of construction.

The parties reserved their right to file a full rate proceeding. However, the filing of a request for a rate increase by EnergyNorth Natural Gas, Inc. before the effective date of this step adjustment would make the step adjustment null and void.

The staff and the company supported the step increase by facts on the record demonstrating that the step adjustment would be easily verifiable, equitable, and necessary due to changes in plant investment and growth in the customer base.

III. *Commission Analysis*

"[1, 2]" The commission finds that the revenue requirement as developed is supported by the evidence and is just and reasonable, therefore, we accept it for resolution of this particular petition in accordance with the agreement. The proposed increase will be effective as of November 1, 1988, pursuant to the stipulation.

We find that the procedure developed in the oral agreement to calculate the EnergyNorth Natural Gas post-merger rate is just and reasonable. It produces a better estimate of the recoupment allowed during the temporary rate period. The companies shall file appropriate surcharge tariffs and supporting information on or before November 1, 1988.

In determining the rates for the merged company one of our concerns was the effect on customers bills as a result of the rate increase, the recoupment, and the merger. Below we show

the impact on bills for average use residential customers for each company.

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

TARIFF CLASS	GSI	MGC "D"	CNGC "D"	CNGC "RH"	CNGC "RG"	OVERALL EFFECT
Increase in Base Rates due to Rate Increases	+2.61%	+4.08%	+6.18%	+6.18%		+3.7%
Effect of Merging Rate Structures (after above rate increase)		+1.5%	-4.0%	+2.2%	-29.0%	0%
Increase in Cust. Bills due to Re-coupment Surcharge	+0.4%	+0.5%	+0.9%	+0.9%		+0.5%
Sum of Above	+4.6%	+0.6%	+8.9%	-22.3%		+4.2%

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Our order will issue accordingly.

ORDER

Upon consideration of the foregoing Report Regarding Permanent Rate Investigation, which is made a part hereof, it is hereby

ORDERED, that the proposed stipulation among the staff, the consumer advocate, Manchester Gas Company, Concord Natural Gas Company and Gas Service, Inc. is approved; and it is

FURTHER ORDERED, that the ENGI shall file the following:

a. Revised consolidated tariff pages reflecting the consolidated base revenue increase and bearing an effective date of all bills rendered on or after November 1, 1988, bearing the following annotation: "Authorized by commission order no. 19,207 in dockets DR 87-243, DR 87-244 and DR 87-245, issued October 27, 1988"; and

b. Surcharge tariffs and supporting information on or before November 1, 1988, bearing an effective date of November 1, 1988 and bearing the following annotation: "Authorized by commission order no. 19,207 in dockets DR 87-243, DR 87-244 and DR 87-245, issued October 27, 1988."

By order of the Public Utilities Commission of New Hampshire this twenty-seventh day of October, 1988.

FOOTNOTES

[1]Gas Service, Manchester, and Concord will hereinafter be collectively referred to as the companies.

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73 NH PUC 435

Re EnergyNorth Natural Gas, Inc.

DR 88-146
Order No. 19,208

New Hampshire Public Utilities Commission

October 27, 1988

REPORT and order concerning the winter cost of gas adjustment of a natural gas distribution utility.

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1. AUTOMATIC ADJUSTMENT CLAUSES, § 10 — Authorization, reasonableness, and scope of application — Cost recovery — Energy costs — Currently effective rates — Gas.

[N.H.] A gas distribution utility was directed to recalculate its winter cost of gas adjustment (CGA) using the currently effective rates and charges of pipeline company, rather than the rates proposed by the pipeline in a rate case pending before the Federal Energy Regulatory Commission; the distribution utility could petition the commission to revise its CGA rate to reflect the outcome of settlement discussions between the pipeline and its customers, once the outcome was known. p. 437.

2. RATES, § 380 — Gas — Interruptible sales program — Separation of pilot and main burner usage.

[N.H.] A gas distribution utility was directed (1) to install metering systems that monitored pilot and main burner usage separately or that provided the utility with enhanced monitoring capability, (2) to institute procedures requiring each customer to contact the utility prior to using gas in emergencies, and (3) in all cases of unauthorized gas usage, to apply a penalty provision included in the utility's contracts to prevent customers from using gas in excess of that required for pilot usage; the commission found that the utility's use of a single meter for both pilot and main usage necessarily resulted in a

loss of control over interruptible sales, thus defeating the primary objective of interruptible gas programs. p. 437.

APPEARANCES: For EnergyNorth Natural Gas, Inc., David Marshall, Esquire of Orr & Reno, P.A.

By the COMMISSION:

REPORT

On September 30, 1988, EnergyNorth Natural Gas, Inc. (ENNG or the company), a public utility engaged in the business of supplying gas in the State of New Hampshire, filed with this commission its tariff Original Page 1, NHPUC No. 1 — Gas. Said tariff provided for a 1988/89 Winter Cost of Gas Adjustment (CGA) for effect November 1, 1988, that cost of gas adjustment to be a credit surcharge of $(0.0411) per therm, net of the franchise tax.

An order of notice was issued setting hearings for October 21, and 24, 1988 at the commission offices in Concord.

On October 21, 1988 ENNG submitted 1st Revised Page 1, Superseding Original Page 1, revising the cost of gas adjustment calculation to produce a rate of $(0.0389) per therm, net of the franchise tax. The company stated that the reason for the revision to its filing was an error in the calculation of the demand charge associated with the Penn-York underground storage facility.

During the hearing on October 21 and 24, 1988 the following issues were addressed: a) Tennessee Gas Pipeline Company's rate case (Docket No. RP 88-228); b) Tennessee Cas Pipeline's gas inventory charge; c) propane purchasing practices; d) interruptible gas margins; e) interruptible gas metering practices; f) spot and R-gas purchases. Of these issues only Tennessee's rate case and interruptible gas metering practices required further commission analysis.

POSITION OF THE PARTIES

Tennessee Rate Case

The only issue on which the parties differed significantly and which also had a material bearing on the outcome of the CGA was the question of whether Tennessee Gas Pipeline Company's (Tennessee) proposed rates in its pending Federal Energy Regulatory Commission (FERC) rate case should be reflected in the company's filing.

Tennessee filed its tariff revisions on August 1, 1988 with a proposed effective date of September 1, 1988. On August 31, 1988 the FERC accepted and suspended the filing to become effective on February 1, 1989, subject to refund and conditions. On September 30, 1988 Tennessee filed revised tariff sheets in compliance with the FERC's August 31, 1988 order. EnergyNorth's CGA filing reflects only the August 1, 1988 rate revisions.

The company witness Mr. Fleming argued that Tennessee's revised rates should be reflected in the filing because the FERC has made these rates effective February 1, 1989, *i.e.*, within the upcoming winter CGA period. Staff, on the other hand, argued through cross-examination that the proposed rates are unlikely to bear any resemblance to the final rates and should therefore be rejected.

Interruptible Sales Gas

Staff submitted an exhibit titled “Manchester Gas Interruptible Accounts — 1986-88” which purported to show that the former Manchester Gas Company had been supplying gas to certain

interruptible customers outside of the normal interruptible period. It was brought out through cross-examination that gas was supplied during the winter months in excess of pilot usage (pilot usage is allowed in all contracts). Staff noted that the company failed to apply the penalty provided in the contract for unauthorized usage and therefore contributed to the abuse of the program. Staff also noted that by its policy of requiring only a single meter for both pilot and main usage the company had relinquished control over supplies to certain interruptible customers. This is in contrast to the practice employed in Gas Service, Inc. where dual metering is required so that gas to the main burners can be shut-off without effecting pilot usage.

Mr. Fleming stated that the situation arose out of old practices employed by Manchester Gas and that these practices were currently under review by ENNG. Specifically, Mr. Fleming stated that the ENNG was looking at purchasing and installing telemetering equipment which would provide the company with an enhanced monitoring capability.

COMMISSION ANALYSIS

In Order No. 19,209 (73 NH PUC 438), Northern Utilities 1988/89 Winter Cost of Gas Adjustment, we found Northern's filed CGA rate to be just and reasonable. However, that rate was based on currently effective Tennessee rates and charges and took no account of Tennessee's pending rate case. Our decision to disregard the Tennessee rate revisions was based primarily on the oral testimony of Mr. Simpson of Northern Utilities. According to Mr. Simpson the company had been advised that only $32 million of $190 million additional revenues requested by Tennessee was rate case related. Part of the remaining $158 million, he said, is take-or-pay related and should be recovered through take-or-pay surcharges. In addition, Tennessee's request for a seventeen (17) percent rate of return on equity would be difficult to substantiate. Mr. Simpson concluded, therefore, that the upcoming settlement discussion between Tennessee and its customers would result in rate changes radically different to those proposed in the September 30, 1988 filing. Furthermore, Mr. Simpson was confident that settlement could be reached prior to the February 1, 1989 effective date. Whatever the outcome of these discussions, Northern will reassess its position as the situation becomes more clear and, if necessary, petition the commission for a revision to its CGA rate.

[1] Since we found Northern's proposed approach to involve little, if any, risk of significant revenue shortfall, consistency and the public good requires us to direct EnergyNorth Natural Gas to recalculate its 1988/89 winter CGA using currently effective Tennessee Gas Pipeline rates and charges. The company may petition the commission to revise its CGA rate to reflect the outcome of the Tennessee settlement discussions once that outcome is known.

[2] With regard to interruptible sales gas we find that the company has for some years applied a less rigorous standard of metering in the Manchester Gas franchise area than that applied to Gas Service customers. This single meter policy has resulted in some Manchester Gas customers using gas in the winter months far in excess of that required for pilot usage. We

also find that the company has contributed to this situation by consistently failing to avail itself of a provision in its contracts designed specifically to prevent such abuse. More importantly we find that the use of a single meter for both pilot and main usage necessarily

results in a loss of control over interruptible sales, thus defeating the primary objective of interruptible gas programs. Accordingly, we direct the company to:

a) Install, before the beginning of the 1989/90 winter season, metering systems that either separately monitor pilot and main burner usage or provide the company with enhanced monitoring capability;

b) institute procedures that require each customer to contact the company prior to using gas in emergencies;

c) apply the penalty provision in all cases unauthorized gas usage.

Our order will issue accordingly.

ORDER

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

ORDERED, that First Revised Page 1, superseding Original Page 1, NHPUC No. 1 — Gas, providing for a 1988/89 Winter Cost of Gas Adjustment for effect November 1, 1988 is rejected; and it is

FURTHER ORDERED, that costs related to Tennessee Gas Pipeline Company's rate case (FERC docket no. RP 88-228) be removed from the Cost of Gas Adjustment; and it is

FURTHER ORDERED, that EnergyNorth Natural Gas, Inc. resubmit its tariff page; and it is

FURTHER ORDERED, that EnergyNorth Natural Gas, Inc. take the necessary actions to ensure that the following changes to interruptible gas service are implemented:

a) Install before the beginning of the 1989/90 winter season metering systems which either separately monitor pilot and main burner usage or provide the company with enhanced monitoring capability;

b) institute procedures that requires each customer to contact the company prior to using gas in emergencies;

c) apply the penalty provision in all cases of unauthorized gas usage.

By order of the Public Utilities Commission of New Hampshire this twenty-seventh day of October, 1988.

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NH.PUC*10/27/88*[52073]*73 NH PUC 438*Northern Utilities, Inc.

[Go to End of 52073]

73 NH PUC 438

Re Northern Utilities, Inc.

DR 88-148
Order No. 19,209

New Hampshire Public Utilities Commission

October 27, 1988

ORDER revising the winter cost of gas adjustment rate of a gas distribution company and requiring the company to implement changes to its interruptible gas sales program.

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1. AUTOMATIC ADJUSTMENT CLAUSES, § 49 — Cost of gas adjustment clause — Rate adjustment — Natural gas distribution company.

Page 438

[N.H.] The cost of gas adjustment clause rate of a gas distribution company was adjusted to reflect (1) rate adjustments by gas suppliers, (2) the use of actual rather than forecasted rates for off-system sales, (3) a correction to the calculation of the costs of transporting gas, (4) the inclusion of liquefied natural gas volumes used for processing, (5) updated pipeline demand charges, (6) corrected New Hampshire division allocation factors, and (7) revised interest expense. p. 439.

2. RATES, § 380 — Gas — Interruptible sales program — Gas distribution company.

[N.H.] A gas utility was directed to implement the following changes to its interruptible gas sales program: (a) Install, before the beginning of the 1989/90 winter season, metering systems which either separately monitor pilot and main burner usage or provide the company with enhanced monitoring capability; (b) institute procedures that require each customer to contact the company prior to using gas in emergencies; (c) enforce penalty clauses in interruptible contracts in all instances of unauthorized gas usage. p. 440.

3. AUTOMATIC ADJUSTMENT CLAUSES, § 9 — Cost of gas adjustment clause — Cost elements — Non product costs.

[N.H.] A gas distribution company was directed to remove non product costs from its cost of gas adjustment clause (CGAC); non product costs should be recovered through basic rates rather than through the CGAC. p. 440.

APPEARANCES: For Northern Utilities, Inc., Elias G. Farrah, Esquire; For Staff, Eugene F. Sullivan, Finance Director, George R. McClusky, Utility Analyst

By the COMMISSION:

REPORT

On October 3, 1988, 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, Eleventh Revised Page 24 of N.H.P.U.C. No. 7-Gas providing a 1988-89 Winter Cost of Gas Adjustment (CGA) for effect November 1, 1988. This cost of gas adjustment was to be a surcharge credit of $(.1765) per therm.

An Order of Notice was issued setting the date of the hearing as of October 21, 1988 at the

Commission offices in Concord, New Hampshire.

[1] On October 20, 1988, Northern filed a revision, Twelfth Revised Page 24, N.H.P.U.C. No. 7-Gas, with a proposed CGA rate of $(0.1754) per therm. This reduction was caused by five revisions; rates were adjusted by Granite State and Shell Canada; the cost of Bay State purchases was updated to reflect actual rates instead of forecast rates for off-system sales; a change correcting the calculation of the cost of transporting Bay State purchase via the pipeline; the cost of LNG has been revised to include the volumes of these purchases used for processing; the calculation of the forecasted September and October 1988 Granite State pipeline demand charges, deferred to the winter CGA period has been revised to reflect the correct New Hampshire Division allocation factors. These changes effected the interest expense.

During the hearing on October 24, 1988, the following issues were discussed: Tennessee Gas Pipeline's (Tennessee) rate increase proposed to be effective February 1, 1989 (Rate Case FERC docket RP 88-228); Tennessee Gas Pipeline's gas inventory charge; procedures for Interruptible customers; take or pay recovery and related interest; reconciliation of the

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over/under collection; Winter Related Non Product Costs.

TENNESSEE RATE CASE

Tennessee filed its tariff revisions on August 1, 1988 with a proposed effective date of September 1, 1988. On August 31, 1988 the FERC accepted and suspended the filing to become effective on February 1, 1989, subject to refund and conditions. On September 30, 1988 Tennessee filed revised tariff sheets in compliance with the FERC's August 31, 1988 order.

The Company did not include the proposed Tennessee rate increase in its CGA filing as it felt that the rate was subject to many changes prior to its implementation. Staff agrees with the Company that Tennessee's proposed rates are unlikely to bear any resemblance to the final rates and, therefore, should not be included in the CGA rates. The Commission concurs with Staff. The Company may petition the Commission to revise its CGA rate to reflect the outcome of the Tennessee settlement discussions once that outcome is known.

PROCEDURES FOR INTERRUPTIBLE CUSTOMERS

[2] Northern's Interruptible customers have single metering. Customers are required to contact the Company when gas for emergency use is needed during non-interruptible sales periods. The Company testified that these customers had done so except maybe one instance. No penalties were invoked by the Company.

Although Staff is not aware of any abuse of the interruptible sales program they, nevertheless, suggest that Northern be required to comply with the same conditions as applied to EnergyNorth Natural Gas as in Order No. 19,208 which are as follows:

a: Either dual metering or telemetering be installed to monitor gas use by these interruptible customers.

b: Procedures be instituted wherein the customer contacts the Company when emergency gas is needed.

c: Penalty clauses in interruptible contracts be enforced.

The Commission agrees with Staff's suggestion.

TAKE OR PAY RECOVERY AND RELATED INTEREST

During cross-examination company witness Ferro stated that interest was calculated on the take or pay costs for July through September, not through October as stated in his prefiled testimony (Exhibit 1, Prefiled Testimony of Joseph A. Ferro, Page 7, lines 24-26). Northern included the month of October in calculating the interest expense for the Take or Pay Charges (Exhibit 1, JAF8, page 8 of 8). The witness stated that the interest costs would not be incurred until January 1989. As this change would not significantly effect the proposed rate, the Company will not be required to refile its CGA tariff. However, we will expect that the costs will be reflected properly in the reconciliation for the upcoming winter period.

WINTER RELATED NON PRODUCT COSTS

[3] The Company has included certain winter related non product costs to the Winter Cost of Gas. The Commission has allowed inventory financing costs and storage costs to be included in the CGA in the past. However, there is a point when certain costs should be included in basic

rates. Basic operation and maintenance costs, such as electricity, should not be included in the cost of gas. The reason that the CGA was initiated in the first place was to insulate companies from dramatic changes in fuel prices. We do not intend to include other non product related costs in the CGA. Therefore, the Company shall make the necessary changes to its accounting records.

Our order will issue accordingly.

ORDER

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

ORDERED, that Eleventh Revised Page 24 issued October 3, 1988, providing for a cost of gas adjustment of $(0.1765) per therm be, and hereby is, rejected; and it is

FURTHER ORDERED, that Twelfth Revised Page 24 issued October 20, 1988, providing for a cost of gas adjustment of $(0.1754) per therm be, and hereby is, approved; and it is

FURTHER ORDERED, that Northern Utilities, Inc. take the necessary actions to ensure that the following changes to interruptible gas service are implemented:

a) Install, before the beginning of the 1989/90 winter season, metering systems which either separately monitor pilot and main burner usage or provide the Company with enhanced monitoring capability;

b) institute procedures that require each customer to contact the Company prior to using gas in emergencies;

c) apply the penalty provision in all cases of unauthorized gas usage.

FURTHER ORDERED, that public notice of this Cost of Gas Adjustment be given by one

time publication in newspapers having general circulation in the territories served; and it is

FURTHER ORDERED, the above rate is to be adjusted by a factor of approximately 1% according to the utilities classification in the Franchise Tax Docket DR 83-205, Order No. 15,624.

By order of the Public Utilities Commission of New Hampshire this twenty-seventh day of October, 1988.

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NH.PUC*10/28/88*[52074]*73 NH PUC 441*Petrolane Southern New Hampshire Gas Company, Inc.

[Go to End of 52074]

73 NH PUC 441

Re Petrolane Southern New Hampshire Gas Company, Inc.

DR 88-145
Order No. 19,211

New Hampshire Public Utilities Commission

October 28, 1988

ORDER revising the cost of gas adjustment rate of a gas distribution company.

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1. AUTOMATIC ADJUSTMENT CLAUSES, § 53 — Cost of gas adjustment clause — Rate adjustment — Over/undercollection — Gas distribution company.

[N.H.] The cost of gas adjustment rate of gas distribution company was revised to reflect a corrected calculation of over/undercollection. p. 442.

2. AUTOMATIC ADJUSTMENT CLAUSES, § 54 — Cost of gas adjustment clause — Rate adjustment — Over/undercollection — Interest — Gas distribution company.

[N.H.] In a cost of gas adjustment clause proceeding, the commission directed that over- or undercollections experienced by a gas distribution company are to accrue interest at the prime rate reported in the *Wall Street Journal* effective November 1, 1988; the interest rate is to be adjusted each quarter using the rate reported on the first day of the first month of a quarter. p. 442.

APPEARANCES: Ransmeier and Spellman by Dom D'Ambruoso on behalf of the Company; Mary Jean Newell, P.U.C. Examiner on behalf of the Commission Staff.

By the COMMISSION:

REPORT

On September 30, 1988 Petrolane-Southern New Hampshire Gas Company, Inc. (Petrolane or the Company), a public utility engaged in the business of supplying gas in the State of New Hampshire, filed with this Commission 138 Revision page 15, Superseding 137 Page 15, N.H.P.U.C. (Issued September 28, 1988), providing for the 1988-89 Winter Cost of Gas Adjustment (CGA) effective November 1, 1988. The revised filing requested a CGA rate of $0.0688 per therm excluding the state franchise tax.

On October 4, 1988 the Commission issued an Order of Notice setting the hearing date of October 14, 1988 at the Commission offices in Concord.

[1] On October 14, 1988 the Company submitted 140 Revision Page 15, Superseding 139 Page 15 providing for a CGA rate of $0.035 per therm excluding the state franchise tax. This Revision corrected the Tariff Page numbering and the calculation of the interest on the over/under collection.

Areas covered through direct testimony and cross examination included an explanation of the revision, the cost of propane and the interest rate charged on the calculation of the over/under collection.

The witness testified that the revision was needed to correct the calculation of the over/under collection. The interest is calculated on an average monthly balance and added to that months ending balance to arrive at the next months beginning balance. In this manner the interest is accumulated through the end of the current winter period and then included on the tariff page to adjust the Anticipated Cost. Likewise, the over/under collected amount adjusts the Anticipated Cost.

During cross examination it was discovered that one of the Prior Period adjustments was improperly titled. The term “Uncollected” should have been “Over Collected”. Also, the Tariff Page had not been signed.

The second item testified to was the cost of propane. The witness advised that the cost of propane included insurance and freight. The witness stated that the Company had gone out for bid and had three or four responses. Petrolane was the lowest bidder.

[2] The final item was the interest rate to be used in calculating the over/under collection. The witness felt that the Company would have no problem using the same methodology as used for Customer Deposits. The Commission has adopted the use of the Prime Rate reported daily in the *Wall Street Journal.* The present policy is to use the rate reported on the first day of the month preceding the first month of a quarter. (The rate quoted on the first of December, March, June and September is to be used for quarters starting January, April, July and October). The revised method tends to keep the rate at a current level.

On October 25, 1988 the Company filed 140 Revision Page 15, Superseding 139 Page 15 with the above corrections and signature.

Our order will issue accordingly.

ORDER

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

ORDERED, that the 138th Revised Page 15 of Petrolane-Southern New Hampshire Gas Company, Inc., tariff NHPUC, providing for a cost of gas adjustment of $0.0688 per therm for the period of November 1, 1988 through April 30, 1989 be, and hereby is, rejected, and it is

FURTHER ORDERED, that the signed 140 Revision Page 15 of Petrolane-Southern New Hampshire Gas Company, Inc., tariff NHPUC, providing for a cost of gas adjustment of $0.035 per therm for the period of November 1, 1988 through April 30, 1989 is approved by this order, said rate to become effective with all billings issued on or after November 1, 1988; and it is

FURTHER ORDERED, that the over/under collection will accrue interest at the Prime Rate reported in the *Wall Street Journal* effective November 1, 1988. The rate is to be adjusted each quarter using the rate reported on the first day of the month preceding the first month of a quarter.

FURTHER ORDERED, that public notice of this cost of gas adjustment be given by one time publication in newspapers having general circulation in the territories served; and it is

FURTHER ORDERED, the above rate is to be adjusted by a factor of approximately 1% according to the utilities classification in the Franchise Docket, DR 23-205, Order No. 15,624.

By order of the Public Utilities Commission of New Hampshire this twenty-eighth day of October, 1988.

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NH.PUC*10/28/88*[52075]*73 NH PUC 443*Pennichuck Water Works, Inc.

[Go to End of 52075]

73 NH PUC 443

Re Pennichuck Water Works, Inc.

DR 87-224
Order No. 19,213

New Hampshire Public Utilities Commission

October 28, 1988

ORDER approving a settlement agreement in a water rate case.

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1. RETURN, § 115 — Water utility — Settlement agreement.

[N.H.] Pursuant to a settlement agreement reached in a water rate case, an allowed return on equity of 12.03%, a cost of preferred equity of 10.43%, a cost of long term debt of 10.27%, and a

cost of short-term debt of 10% was applied to a water utility's capital structure to produce an overall rate of return of 10.92%. p. 445.

2. VALUATION, § 25 — Thirteen month average *pro forma* rate base — Water utility.

[N.H.] Pursuant to a settlement agreement reached in a water rate case, a thirteen month average *pro forma* rate base of $19.3 million was used for purposes of determining permanent rates. p. 445.

3. RATES, § 596 — Water rate design — Metered service rate — Flat one-step consumption charge — Settlement agreement.

[N.H.] Pursuant to stipulation, the metered service rates of a water utility must employ a flat one-step consumption charge instead of the previously employed two-tier design, and the annual revenue requirement of the utility (exclusive of that collected from a special contract customer) must be collected by increasing, proportionally, the company's permanent base rates as revised by the flat one-step consumption charge; however, the flat one-step consumption charge may be reviewed in the company's next rate case on the basis of a cost of service study to be commissioned by the company. p. 445.

4. RATES, § 597 — Water rate design

Page 443

— Special contract rate — Stipulation.

[N.H.] Pursuant to stipulation, a special rate contract between a water utility and an industrial customer was amended so that the customer would continue to provide 3.8% of the utility's revenues despite its change from a two-tiered to flat rate. p. 445.

5. RATES, § 630 — Temporary rates — Recoupment of deficiencies — Water Utility — Rate surcharge.

[N.H.] Pursuant to stipulation, a water utility was allowed to recoup, by surcharge, the difference between (a) the revenue actually billed by the company pursuant to temporary rates approved by the commission in a prior order and (b) the revenues that the company would have billed had it charged rates reflecting the permanent rate increase ultimately approved by the commission. p. 446.

6. RATES, § 597 — Water rate design — Special factors — Step adjustment.

[N.H.] Pursuant to stipulation, a water utility was authorized to implement a step adjustment to its permanent rates, effective not later than with service rendered on or after November 1, 1989; the step adjustment will be collected by increasing proportionally the utility's permanent base rates and will reflect adjustments to the following plant-related components of the revenue requirement: (1) all plant additions and deletions on or before September 30, 1989, to the extent not already included in rate base, (2) related depreciation expense and property taxes, (3) deferred taxes and depreciation reserve related to the rate base adjustment, (4) revenues derived from customers added between October 1, 1988 and September 30, 1989, and (5) contributions in aid of construction and balances for deferred assets in rate base as of September 30, 1989. p. 446.

APPEARANCES: Mary Ellen Kiley, Esq., and John B. Pendleton, Esq. of Gallagher, Callahan and Gartrell on behalf of Pennichuck Water Works, Inc.; Dom S. D'Ambruoso, Esq. of Ransmeier and Spellman for Anheuser-Busch, Inc.; Joseph Rogers, Esq. for the Consumer Advocate; and Mary C.M. Hain, Esq. for the staff of the New Hampshire Public Utilities Commission.

By the COMMISSION:

REPORT REGARDING PERMANENT
RATE INVESTIGATION

This report addresses the petition of Pennichuck Water Works, Inc. (Pennichuck or company) for permanent rates. The report discusses the procedural history, the stipulations of the parties, findings of fact, analysis, and authorizes rates at the stipulated level.

I. *Procedural History*

On November 18, 1987, Pennichuck filed a notice of intent to file a rate increase in the amount of $1.2 million annually. On November 20, 1987, this notice of intent was modified to correct a clerical error lowering the request to a $1.02 million annual rate increase. On January 15, 1988, Pennichuck filed revised tariffs designed to increase its revenues by $705,096 on an annual basis, and also a petition for temporary rates in that amount.

By order no. 18,999 issued February 9, 1988, the commission suspended the proposed tariffs, set a hearing date on temporary rates, and scheduled a prehearing conference on the proposed permanent rates for March 29, 1988. On March 29, 1988, the parties came before the commission and indicated they had reached a settlement regarding the issue of temporary

rates and the procedural schedule under which the permanent rate case should proceed.

By order no. 19,047 issued April 4, 1988 (73 NH PUC 112), the commission approved temporary rate at current rate levels effective for service rendered on or after April 1, 1988 (pursuant to RSA 378:27), and adopted a procedural schedule by which the case would proceed.

On October 4, 1988, the parties filed a settlement agreement which is incorporated herein. This settlement was intended to resolve all the issues in this case.

II. *Positions of the Parties*

The parties entered into a settlement agreement in order to dispose of all aspects of this case. For purposes of discussing the settlement agreement and matters at issue in this proceeding, this section will be divided into the following categories: A) revenue deficiency, B) rate design, C) Anheuser-Busch special contract, D) effective date, E) recoupment of temporary rate deficiencies, and F) step adjustment.

A. Revenue Deficiency

The parties agreed that the company was experiencing a revenue deficiency. Thus, the parties

agreed that the company should be allowed a $598,248 increase in base revenues.

For the purpose of calculating the revenue deficiency in this proceeding, the parties agreed to use the following components.

1. Rate of Return

[1] An allowed return on equity of 12.03%, a cost of preferred equity of 10.43%, a cost of long-term debt of 10.27% and a cost of short-term debt of 10% shall be applied to Pennichuck's capital structure to produce an overall rate of return of 10.92%.

2. Rate Base

[2] The parties stipulated that the rate base would be a thirteen month average *pro forma* rate base of $19,336,581.

3. Net Operating Income

The parties stipulated that the net operating income for the company will be $1,748,299.

B. Rate Design

[3] The parties stipulated that the company's general metered service rates (G-M) shall employ a flat one-step consumption charge instead of the present two-tier design. The annual revenue requirement (net of the 3.8% allocable to Anheuser-Busch) shall be collected by increasing, proportionally, the company's current permanent base rates as revised by the flat one-step consumption charge. The flat one-step consumption charge may be reviewed in the company's next rate case on the basis of a cost of service study to be commissioned by the company prior to that time.

C. Anheuser-Busch Special Contract

[4] As part of the stipulation, the special contract between the company and Anheuser-Busch shall be amended so that Anheuser-Busch will continue to provide 3.8% of the company's revenue. The revenue allocation will be calculated in a

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formula that includes the company's new flat rate rather than the two-tier rate. Thus, paragraph “3” of the special contract shall now read “56.5% of the now lowest rate for general metered service per 100 cubic feet ...” rather than 69.1%. Furthermore, Anheuser-Busch shall be responsible for 3.8% of the temporary rate recoupment.

D. Effective Date

The parties stipulated that the permanent rates would be effective with bills rendered on and after November 1, 1988.

E. Recoupment of Temporary Rate Deficiencies

[5] The parties stipulated that the company would be allowed to recoup, by surcharge, the temporary rate revenue deficiency. This deficiency is the difference between (a) the revenue actually billed by the company pursuant to the temporary rates approved by the commission in report and supplemental order no. 19,047 issued April 4, 1988 and (b) the revenues the company

would have billed had it charged rates reflecting the permanent rate increase. The recoupment shall be effective with bills rendered on or after November 1, 1988, with recoupment from April 1, 1988, the date temporary rates became effective. Upon receipt of the commission rate order the company shall file supporting data and a compliance tariff for a determination of supplemental recoupment rates. The surcharge shall be designed to recoup the deficiency over a twelve (12) month period.

F. Step Adjustment

[6] The parties agreed that the company shall be allowed a step adjustment to its permanent rates, effective not later than with service rendered on and after November 1, 1989. Subject to the provisions of the agreement, the step adjustment will be collected by increasing proportionately the company's permanent base rates. Specifically, the step will reflect adjustments to the following plant-related components of the revenue requirement: 1) all plant additions and deletions on or before September 30, 1989, to the extent not included in the rate base reflected in Exhibit B of the agreement; 2) related depreciation expenses and property taxes; 3) deferred taxes and depreciation reserve related to the rate base adjustment; 4) revenues derived from customers added between October 1, 1988 and September 30, 1989, and 5) contributions in aid of construction and balances for deferred assets in rate base as of September 30, 1989. The parties agreed that the rate of return agreed to in these proceedings and set forth in the agreement shall remain in effect, without change at the time of the step adjustment.

The company agreed to file revised tariff pages embodying the step adjustment, accompanied by all supporting documentation to show the adjusted revenue requirement in accordance with the specific adjustments discussed above, as soon as possible after September 30, 1989, but not later than October 10, 1989. Under the agreement the tariff pages would become effective for service rendered on and after November 1, 1989.

The parties agreed that the commission may schedule a hearing, if it deems one necessary, and shall issue an order with respect to the step adjustment effective no later than the effective date of the adjustment as provided above. They agreed that the scope of any such step adjustment filing or proceeding shall be limited to a

verification of the actual increases or decreases in and prudency of the items set forth in the step adjustment section of the agreement.

III. *Commission Analysis*

The commission finds that the revenue requirement as developed is supported by the evidence and is just and reasonable; therefore, we accept it for resolution of this particular petition in accordance with the agreement.

The proposed increase will be effective as of November 1, 1988, pursuant to the stipulation. The company shall file appropriate surcharge tariffs and supporting information on or before November 1, 1988.

Our order will issue accordingly.

ORDER

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

ORDERED, that the proposed stipulation among the staff, the Consumer Advocate, Anheuser-Busch, and Pennichuck Water Works, Inc. is approved; and it is

FURTHER ORDERED, that the companies shall file the following:

a. Revised tariff pages reflecting the base revenue increases and bearing an effective date of all bills rendered on or after November 1, 1988, bearing the following annotation: "Authorized by commission order no. 19,213 in docket DR 87-224, issued October 28, 1988"; and

b. Surcharge tariffs and supporting information on or before November 1, 1988, bearing an effective date of November 1, 1988 and bearing the following annotation: "Authorized by commission order no.19,213 in docket DR 87-224, issued October 28, 1988."

By order of the Public Utilities Commission of New Hampshire this twenty-eighth day of October, 1988.

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NH.PUC*10/28/88*[52076]*73 NH PUC 447*EnergyNorth Natural Gas, Inc.

[Go to End of 52076]

73 NH PUC 447

Re EnergyNorth Natural Gas, Inc.

DR 88-146
Supplemental Order No. 19,215

New Hampshire Public Utilities Commission

October 28, 1988

ORDER authorizing a natural gas distributor to implement a revised winter cost of gas adjustment rate.

AUTOMATIC ADJUSTMENT CLAUSES, § 7 — Energy cost clauses — Natural gas — Winter cost of gas adjustment rate — Distribution company.

[N.H.] A natural gas distribution company was authorized to implement a revised cost of gas adjustment rate of $(0.0369) per therm net of franchise tax; the rate is to be adjusted by a factor of 1% according to the utilities classification in the franchise tax docket DR 83-205, Order No. 15,624.

By the COMMISSION:

SUPPLEMENTAL ORDER

WHEREAS, the commission rejected EnergyNorth Natural Gas, Inc.'s First Revised Page 1, providing for a cost of gas adjustment of $(0.0389) per therm net of franchise tax, it is hereby

ORDERED, that Second Revised Page 1, issued October 27, 1988 providing for a

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cost of gas adjustment of $(0.0369) per therm net of franchise tax be, and hereby is, approved; and it is

FURTHER ORDERED, that public notice of the Cost of Gas Adjustment be given by one time publication in newspapers having general circulation in the territories served; and it is

FURTHER ORDERED, that the above rate is to be adjusted by a factor of 1% according to the utilities classification in the franchise tax docket DR 83-205, order no. 15,624.

By order of the Public Utilities Commission of New Hampshire this twenty-eighth day of October, 1988.

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NH.PUC*10/28/88*[52080]*73 NH PUC 452*Rodgers Development Company

[Go to End of 52080]

73 NH PUC 452

Re Rodgers Development Company

DS 88-157
Order No. 19,219

New Hampshire Public Utilities Commission

October 28, 1988

APPLICATION for license to construct a sewer connector and manhole on state-owned railroad property; granted.

CERTIFICATES, § 76 — Factors affecting grant or refusal — Sewer connector.

[N.H.] License to construct, use, and maintain a sewer connector and a manhole within the right-of-way and beneath tracks of state-owned railroad property was granted where all proposed construction complied with the requirements of relevant agencies, and approval statements or easements, or both, were received from all persons abutting the property under which the sewer connector must pass before the railroad right-of-way.

By the COMMISSION:

ORDER

WHEREAS, on October 12, 1988, Provan & Lorber, Inc. filed with this commission on behalf of its client, Rodgers Development Company of Nashua, NH, a petition seeking license under RSA 371:17 to construct, use, maintain, repair and reconstruct a sewer connector and a manhole within the right-of-way and beneath tracks of State-owned railroad property in Tilton, New Hampshire at approximate Valuation Station 1010+37, Map V21/54; and

WHEREAS, the petitioner assures the commission that the project has been

coordinated with the Tilton Sewer Commission, the Water Supply & Pollution Control Division of the Department of Environmental Resources, and the Bureau of Railroads of the Department of Transportation; and

WHEREAS, the petitioner has provided approval statements and/or easements from all persons abutting the property under which the sewer connector must pass before the railroad right-of-way; and

WHEREAS, all construction proposed will meet the requirements of each of these agencies; and

WHEREAS, the commission finds that requirements of RSA 371:20 are met by the above; and

WHEREAS, the commission finds that such construction will not affect substantially the public rights in said land; it is

ORDERED, that Rodgers Development Company, 837 West Hollis Street, Nashua, New Hampshire, be, and hereby is, granted license under RSA 371:17 et seq to construct, use, maintain, repair and reconstruct a sewer connector and manhole on state-owned railroad property in Tilton, New Hampshire, at approximate Valuation Station 1010+37, Map V21/54 according to Sheet 15 of 23, Drawing No. 1001, Project No. 12186 on file with the commission as well as Special Conditions — Railroad; and it is

FURTHER ORDERED, that provisions of Puc 1601.05(j) are waived; and it is

FURTHER ORDERED, that license granted herein become effective on the date of this order; and it is

FURTHER ORDERED, that license granted under RSA 371:17 shall not preclude further actions by this commission should subsequent proceedings determine the sewer plant in question is a public utility; and it is

FURTHER ORDERED, that any payments due for the use of said sewer facilities shall be subject to terms and conditions prescribed by the town of Tilton Sewer Commission.

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

October, 1988.

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[Go to End of 52077]

73 NH PUC 448

Re Somersworth Water Works

DR 88-124
Supplemental Order No. 19,216
New Hampshire Public Utilities Commission
October 31, 1988

ORDER nisi authorizing a water utility to increase its consumption charge.

RATES, § 595 — Water — Consumption charge.

[N.H.] A water utility was conditionally authorized to increase its consumption charge for usage above the minimum allowance where (1) the increase was found to represent a reasonable adjustment to reflect increases in operating expenses, and (2) the increase would be applied equally to all customers; final approval was conditioned upon the public having an opportunity to respond in support or opposition to the charge increase.

By the COMMISSION:

SUPPLEMENTAL ORDER

WHEREAS, Somersworth Water Works has filed certain revisions to its tariff NHPUC No. 1, seeking authority to increase the consumption charge for usage above the minimum allowance, to recover increased annual revenues of $413 (14%) from its 39 customers in Rollinsford; and

WHEREAS, the customers residing in the town of Rollinsford are under commission jurisdiction; and

WHEREAS, the increase sought in its rate structure will be applied equally to customers in Somersworth; and

WHEREAS, the increase sought represents a reasonable adjustment to reflect the increased operating expenses since rate levels were last set in 1983, and is thus in the public good; and

WHEREAS, the public should be offered an opportunity to respond in support or in opposition before the commission acts on this petition; it is hereby

ORDERED, that all persons interested in responding to the petition be notified that they may submit their comments to the commission or may submit a written request for a hearing in this matter no later than November 21, 1988; and it is

FURTHER ORDERED, that Somersworth Water Works effect said notification by mailing a copy of this order as well as proposed new rates by certified mail, return receipt requested, to each of the 39 customers in Rollinsford and by publication of an attested copy of this order once in a newspaper having general circulation in that portion of the State in which operations are proposed to be conducted, such publication to be no later than November 14, 1988 and designated in an affidavit to made on a copy of this order and filed with

this office on or before November 28, 1988; and it is

FURTHER ORDERED, *NISI* that Somersworth Water Works' request for an increase in annual revenues be, and hereby is, approved; and it is

FURTHER ORDERED, that such authority shall be effective on November 28, 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; and it is

FURTHER ORDERED, that Somersworth NHPUC No. 1 — Water:

Sixth Revised Title Page
First Revised Page 8
First Revised Page 8A
Sixth Revised Page 17
Third Revised Page 20

be, and hereby are, rejected; and it is

FURTHER ORDERED, that Somersworth Water Works submit revised tariff pages subsequent to the above effective date reflecting this commission order number.

By order of the Public Utilities Commission of New Hampshire this thirty-first day of October, 1988.

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NH.PUC*10/31/88*[52078]*73 NH PUC 449*Pembroke Water Works

[Go to End of 52078]

73 NH PUC 449

Re Pembroke Water Works

DE 88-048
Order No. 19,217

New Hampshire Public Utilities Commission

October 31, 1988

APPLICATION by a municipal water utility for permission to implement a service connection fee for new water connections in franchised areas; granted.

RATES, § 304 — Installation, connection, and disconnection charges — New connections — Municipal utility — Water service.

[N.H.] A municipal water utility was authorized to implement a service connection fee for new water connections in franchised areas, where the commission recognized the unique financial characteristics of municipal water departments (municipal systems were not profit-making institutions and therefore investment of equity capital with the expectation of return on that capital was not involved in their operations), which required that all construction by municipal utilities must be financed by debt or by the collection of fees and charges from the affected class of user.

APPEARANCES: Daniel D. Crean, Esq. for Pembroke Water Works; Andre St. Germaine for Pembroke Water Works; Martin C. Rothfelder, Esq. on behalf of the Commission and Commission Staff.

By the COMMISSION:

REPORT

I. *PROCEDURAL HISTORY*

On May 31, 1988 Pembroke Water

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Works (Pembroke) filed a petition to implement a $750 service connection fee within the areas of the towns of Allenstown and Hooksett presently serviced by Pembroke Water Works. The petitioner also requested the elimination of the current $100 pre-deposit towards the cost for new service pipe. The tariff requirement however, that the owner pay for the installation of the service pipe is unchanged.

An order of notice was issued setting a prehearing conference for August 2, 1988 and an affidavit of publication in the Manchester Union Leader on July 18, 1988 was subsequently received. At the prehearing conference a procedural schedule was established and a hearing was scheduled for September 1, 1988.

The only parties present at the hearing were Pembroke Water Works and the commission staff. No intervenors appeared.

Data requests were submitted by staff and timely responses were provided by the petitioner. The hearing was held on September 1, 1988 with Chairman Vincent J. Iacopino presiding. Testimony was provided by Andre St. Germaine for Pembroke Water Works.

II. *PETITION OF PEMBROKE WATER WORKS*

In March, 1986 Pembroke Water Works instituted a $750 fee which is applied to all new service connections made to the mains within the town of Pembroke. The subject petition seeks authorization of the Public Utilities Commission to apply the same fee to new connections made in the franchised areas outside of Pembroke. In exhibit #1 the petitioner provided a calculation illustrating that the $750 was determined by dividing capital required to add new capacity by the number of new units that the current system could accommodate prior to the need for the new capacity.

"The capital improvements that were needed, according to an engineering study, identified new wells and a storage tank. The cost of these was estimated to be a minimum of $550,000. In adding a 10% overlay on top of that for contingencies resulted in $605,000." (Tr. 6) The $605,000 was divided by the estimated number of new units that could be added to the system (802) before new capacity was required. Therefore, by allowing the imposition of the fee on new units as they connect to the system, funds will be available to provide capital improvements which will assure sufficient capacity for future growth.

Mr. St. Germaine, witness for the petitioner testified that the service connection fee was necessary to begin planning for eventual expansion and improvement of the system.

III. *COMMISSION ANALYSIS*

Under RSA 378:5 and 378:7 the commission may only approve rates and charges which are found to be just, reasonable and lawful. In evaluating the petition of Pembroke Water Works the commission must consider: (1) whether the petitioner has demonstrated that the proposed fees are calculated correctly based on costs, (2) whether collection of the fee in advance of construction is permissible, and (3) whether the rate structure equitably recovers the revenues from the affected class of users.

With regard to the amount of the proposed fee, the petitioner has provided an analysis of the estimated cost per unit of the capital improvements necessary once existing capacity can no longer accommodate new service connections due to low

water pressure and water availability.

The commission has recognized the unique financial characteristics of municipal water departments in previous decisions (e.g. Order No. 18,628 in Docket 86-80, 72 NH PUC 138, Manchester Water Works Source Development Charge). As a result of this recognition we have allowed Manchester Water Works to begin collecting the SDC before actual construction of facilities. A similar fee was also approved in docket DE 88-002, Dover Water Works, Order No. 19,161 (73 NH PUC 347). These decisions were based on the fact that municipal systems are not profit-making institutions and therefore investment of equity capital with the expectation of a return on that capital is not involved in their operations. All construction must be financed by debt or by collection of fees and charges from the affected class of users. We find the petition of Pembroke Water Works similar to the previous cases and therefore will apply the same reasoning to our decision.

With regard to the equity of how revenues will be collected, we take note of the fact that the fee is currently being collected from all new users within the town of Pembroke. Witness St. Germaine clearly stated that the funds will only be applied to new supply and storage facilities to serve new customers and will not be used for operation, maintenance or replacement of existing facilities.

On the basis of our analysis we conclude that the proposed service connection fee is just, reasonable and in the public good.

Our order will issue accordingly.

ORDER

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

ORDERED, that the petition of Pembroke Water Works to implement a $750 service connection fee for each new water connection in the franchised areas is approved; and it is

FURTHER ORDERED, that the petitioner submit a revised tariff page which incorporate the new fee specifying that the fee is only to new units; and it is

FURTHER ORDERED, that the elimination of the $100 pre-deposit to be applied toward the cost for new service pipe is approved.

By order of the Public Utilities Commission of New Hampshire this thirty-first day of October, 1988.

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NH.PUC*10/31/88*[52079]*73 NH PUC 451*Chichester Telephone Company

[Go to End of 52079]

73 NH PUC 451

Re Chichester Telephone Company

DR 88-154
Order No. 19,218

New Hampshire Public Utilities Commission

October 31, 1988

ORDER authorizing a local exchange telephone carrier to reduce rates for touch calling service for residential and business subscribers.

RATES, § 553 — Telephone — Kinds of service and facilities — Touch calling — Rate reduction — Grounds for approving.

[N.H.] A local exchange telephone carrier (LEC) was authorized to reduce its rates for touch

calling service for both residential and business subscribers, because the commission found that the rate change would have a minimal impact on the LEC's subscribers, and the lower rates were projected to increase the volume of touch calling service utilized by subscribers.

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By the COMMISSION:

ORDER

WHEREAS, on October 11, 1988 Chichester Telephone Company (Chichester or company) filed with the commission its NHPUC No. 3 — Telephone, Section 3A, Original and Index, Second Revised Sheet 2, for the purpose of tariffing Touch Calling; and

WHEREAS, one hundred and four of Chichester's customers are currently being provided Touch Calling Service at the rates of $1.25 for residential subscribers and $1.50 for business subscribers; and

WHEREAS, Chichester proposes to offer such service at the rate of $.75 for residential subscribers and $1.00 for business subscribers; and

WHEREAS, the company attests that the proposed rates will be more in-line with value-of-service pricing; and

WHEREAS, the commission finds the proposed change in rates to have a minimal impact on Chichester's subscribers; and

WHEREAS, the lower proposed rates are projected to increase the volume of Touch Calling service utilized by subscribers; it is hereby

ORDERED, that NHPUC No. 3 — Telephone, Section. 3A, Original be accepted and Index, Second Revised Sheet 2, supersede Index, First Revised Sheet 2 effective November 26, 1988.

By order of the Public Utilities Commission of New Hampshire this thirty-first day of October, 1988.

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NH.PUC*10/31/88*[52081]*73 NH PUC 453*Concord Electric Company

[Go to End of 52081]

73 NH PUC 453

Re Concord Electric Company

DE 88-132
Order No. 19,220

New Hampshire Public Utilities Commission

October 31, 1988

ORDER nisi authorizing an electric utility to continue an experimental alternative winter electric service protection program, and waiving application winter termination rules.

PAYMENT, § 33 — Methods of enforcing payment — Denial of service — Winter termination rules — Waiver — Service protection program — Electric utility.

[N.H.] The commission ordered nisi that an electric utility was authorized to continue an experimental alternative winter electric service protection (ESP) program for a 12-month period, and that application to the utility of the winter arrearage provision contained in winter termination rules was waived for the winter period, where the commission found that good cause and justice required that the winter termination rules should be waived for another year; the utility's ESP program was identical to that of its affiliate, which was granted a waiver from winter termination rules for another year because data collected in connection with ESP would provide a basis for a generic docket on winter termination rules to identify a regulatory approach consistent with the public interest in the long run.

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ORDER

WHEREAS, pursuant to Docket No. DE 87-162, the commission issued Report and Order No. 18,846 dated September 22, 1987 (72 NH PUC 442) granting Concord Electric Company (Company) a temporary waiver from the specific winter arrearage provisions contained in N.H. Administrative Rules PUC 303.08(k) (2), (3) and (6) regarding customer protections from electric service protection during the winter period (December 1 — March 31); and

WHEREAS, this waiver was sought by the company in order to implement for the second consecutive year an experimental alternative winter protection program entitled Electric Service Protection (ESP) program; and

WHEREAS, the company requests that the commission grant a similar waiver from the three winter rules provisions to begin on December 1, 1988 and expire on December 1, 1989; and

WHEREAS, the company was directed in order no. 18,846 to prepare and file an evaluation of the 1987-1988 ESP program and submit it to the commission no later than August 1, 1988; and

WHEREAS, on September 7, 1988 the company filed a petition to extend the aforementioned waiver; and

WHEREAS, on September 7, 1988 the company submitted an evaluation of the ESP program for the period December 1987 through July 1988; and

WHEREAS, the ESP program proposed by the company is identical in all respects to that of its affiliate, Exeter and Hampton Electric Company (E & H), considered in Docket DE 88-111,

in which the commission approves the requested waiver, with reservations and conditions; and

WHEREAS, in order no. 19,199 dated October 14, 1988 the commission held that although E & H had a low ratio of bad debt to operating revenues, in part due to E & H's aggressive disconnect policy designed to limit both bad debt and arrearages, the commission must balance the cost of some erosion of winter termination rules (WTR's) protection by E & H's customers against the benefits that might accrue to E & H from promoting the ESP program; and

WHEREAS, the ESP empirical data demonstrates that there has been a substantial erosion of customer protection in terms of higher frequencies of temporary and permanent disconnects issued specifically for customers with arrearages of less than fifty dollars; and

WHEREAS, given E & H's favorable bad debt to operating revenue, the commission held that ESP is unlikely to produce significant additional benefits; and

WHEREAS, ESP was an experimental program and the data collected to date will provide the commission with a basis for opening a generic WTR's docket in order to identify a regulatory approach that is consistent with the public interest in the long run; and

WHEREAS, the commission wishes to bolster the consumers “safety net” by strengthening the disconnect review procedures carried out by the Consumer Assistance Office; and

WHEREAS, beginning December 1, 1988 all E & H disconnect requests submitted for approval to the Consumer Assistance Office shall be in writing and shall include the customer's name, age category (over and under 65) and arrearage amount, and

WHEREAS, order no. 19,999 granted a WTR's rules waiver to E & H for only one more year; and

WHEREAS, pursuant to N. H. Admin. Rules 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 Concord Electric 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 1988 to December 1989 period subject to the commission's conditions detailed in report and order no. 19,199 dated October 14, 1988 in Docket DE 88-111; and it is

FURTHER ORDERED NISI, that the application of N. H. Administrative Rule Nos. 303.08(k) (2), (3) and (6) to Concord Electric Company be, and hereby is, waived for the 1988-1989 winter period; 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 that company provides service, said publication to be made no later than ten (10) days after the date of the 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 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

By order of the Public Utilities Commission of New Hampshire this thirty-first day of October, 1988.

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NH.PUC*11/01/88*[52082]*73 NH PUC 455*Lakes Region Water Company

[Go to End of 52082]

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73 NH PUC 455

Re Lakes Region Water Company

DE 88-156
Order No. 19,221

New Hampshire Public Utilities Commission

November 1, 1988

ORDER nisi authorizing a water utility to enlarge its franchise area.

SERVICE, § 210 — Extensions — Water — Enlargement of franchise area — Grounds for authorizing.

[N.H.] The commission ordered nisi that a water utility was authorized to enlarge its franchise area, where no other water utility had franchise rights and which the utility would serve under its regularly filed tariff, because the commission was satisfied that granting the petition would be for the public good; the authority would become effective in one month, unless a request for hearing was filed or unless the commission ordered otherwise prior to the effective date.

By the COMMISSION:

ORDER

WHEREAS, Lakes Region Water Company (Lakes Region), a water public utility

operating under the jurisdiction of this commission, by a petition filed October 12, 1988, seeks authority under RSA 374:22 and 26 as amended, to enlarge its franchise area in the Town of Thornton; and

WHEREAS, no other water utility has franchise rights in the area sought, and the Petitioner submits that the area will be served under its regularly filed tariff; and

WHEREAS, after investigation and consideration, this commission is satisfied that the granting of the petition will be for the public good; and

WHEREAS, the public should be offered an opportunity to respond in support or in opposition before the commission acts on this petition; it is hereby

ORDERED, that all persons interested in responding to the petition be notified that they may submit their comments to the commission or may submit a written request for a hearing in this matter no later than November 25, 1988; and it is

FURTHER ORDERED, Lakes Region effect said notification by publication of an attested copy of this order once, in a newspaper having general circulation in that portion of the State in which operations are proposed to be conducted, such publication to be no later than November 10, 1988 and designated in an affidavit to be made on copy of this order and filed with this office on or before December l, 1988; and it is

FURTHER ORDERED, that Lakes Region provide further notice to the customers of Albert S. Moulton by providing each with a copy of this order of notice, by First Class U. S. Mail, postage prepaid, postmarked no later than November 10, 1988, with said notice to be documented by affidavit; and it is

FURTHER ORDERED, *NISI* that Lakes Region be authorized pursuant to RSA 374:22, to extend its service in the Town of Thornton in an area herein described:

> An area bound on the north by the existing Lakes Region — WVG division franchise, on the west by Upper Mad River Road, on the south by the Mad River and on the east by land of William Shedd;

and it is

FURTHER ORDERED, that such authority shall be effective on December 1, 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; and it is

FURTHER ORDERED, that the authority here granted shall be contingent on submission by Lakes Region of the following:

1. Approval from the New Hampshire Department of Environmental Services.

2. A map of the franchise area.

3. A tariff page showing the rate charged to the customers of Albert S. Moulton.

By order of the Public Utilities Commission of New Hampshire this first day of November, 1988.

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NH.PUC*11/02/88*[52083]*73 NH PUC 457*Lakeland Management Company

[Go to End of 52083]

73 NH PUC 457

Re Lakeland Management Company

DE 87-111, DE 87-112
Order No. 19,223

New Hampshire Public Utilities Commission

November 2, 1988

ORDER establishing rates for water and sewage disposal utilities.

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1. RATES, § 630 — Temporary rates — Recoupment of deficiencies — Surcharges — Water and sewage disposal utilities.

[N.H.] In a proceeding to establish rates for the water and sewage disposal utilities of a management company, the commission authorized the company to recoup, by means of a temporary rate surcharge over a four-year period, the difference between amounts collected under temporary rates and permanent rates, because such recoupment was required by the applicable state statute when permanent rates were set at levels higher than the previously authorized temporary rates. p. 459.

2. RATES, § 630 — Temporary rates — Recoupment of deficiencies — Surcharges — Water and sewage disposal utilities.

[N.H.] In a proceeding to establish rates for the water and sewage disposal utilities of a management company (which had not filed for permission to operate as a public utility until almost two years after being informed that it should file for such permission), the company was directed to recoup the difference between amounts collected under temporary and permanent rates over a period of four years — even though a two-year recoupment period was normally appropriate — because a proposed rate increase, including a two-year recoupment, would raise some rates by 160%, and because a four-year period would reflect the normally appropriate recoupment period of two years plus the period of time that the company was remiss in filing its petition for permission to operate as a public utility. p. 459.

APPEARANCES: Dom S. D'Ambruoso, Esq. of Ransmeier and Spellman on behalf of Lakeland Management Company; Edward Fitzgerald on behalf of the Granite Ridge Condominium Association; and Mary C.M. Hain, Esq. on behalf of the staff of the New Hampshire Public Utilities Commission.

By the COMMISSION:

REPORT

This report concerns the petitions of Lakeland Management Company to establish rates for its water and sewage disposal utilities. It sets forth the procedural history, positions of the parties, findings of fact and analysis. With the exception of the temporary rate recoupment period, it allows rates stipulated to by the company and the staff to go into effect.

I. *Procedural History*

On June 15, 1987, Lakeland Management Company, Inc. (Lakeland) 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 and, implicitly, to establish permanent rates for service pursuant to RSA Chapter 378.

By an order of notice and a revised order of notice dated respectively July 7, and 8, 1987, the commission scheduled for

August 27, 1987 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 authority to operate as a water and sewer utility (RSA 374:22, :26).

On August 20, 1987, the Orchard at Plumber Hill Condominium Association filed a motion to intervene. At the August 27, 1987 hearing, the Granite Ridge Condominium Association (GRCA) made an oral motion to intervene.

On September 8, 1987, the commission issued order no. 18,839 (72 NH PUC 434) concerning the August 27th hearing. This order ruled on interventions, established a procedural schedule, required notice to the Town of Belmont and the City of Laconia, and continued further decision on temporary and permanent rates.

On September 25, 1987, the company filed certain revisions to its temporary rate filing. On September 28, 1987, the commission, through an administrative error, issued report and order no. 18,856 (a duplicative report and order on the August 27th hearing) (72 NH PUC 465). This report and order was rescinded by order no. 19,128 issued July 11, 1988. On September 30, the Orchard at Plumber Hill Condominium Association withdrew from the proceeding.

On September 30, 1987, the commission held a public hearing on temporary rates. On November 16, 1987, the company filed certain materials requested during the September 30, 1987 hearing.

On November 18, 1987, the commission issued order no. 18,915 (72 NH PUC 540) granting the company's petition to operate as a water and sewage disposal utility in the Town of Belmont conditional upon receipt of a descriptive outline of the franchise area. The commission also granted temporary rates as of the date of the order to be fixed at the level of rates in the company's September 25, 1987 filing. Order no. 18,915 did not authorize a franchise in the City of Laconia and the company, thereafter, did not pursue such a franchise.

On December 14, 1987, the company filed a metes and bounds description of the franchise territory in the Town of Belmont. On February 20, 1988, the company filed a map describing the franchise area, thus satisfying the condition set forth in order no. 18,915. On June 8, 1988, the commission issued an order of notice scheduling a hearing on the matter of permanent rates for August 9 and 10, 1988.

On January 18, 1988, the company filed certain revisions to its permanent rate filing. These revisions recommended an annual revenue requirement of $27,962.00 for the water division and $45,226.00 for the sewer division. The parties met in conference on December 7, 1987, April 5, 1988, and July 27, 1988. On August 9, 1988 Lakeland and the staff filed an agreement settling all of the issues in the case. GRCA did not consent to the agreement.

II. *Positions of the Parties*

The staff and Lakeland supported their agreement to resolve this case. GRCA argued in favor of holding Lakeland's rates at the level of temporary rates until Lakeland has accumulated a full year of cost data to support a rate request. GRCA also contends that Lakeland should not be able to recoup the difference between the temporary rate and permanent rates.

The stipulation provides for the following:

1. A rate base of $100,000 for the water division and a rate base of $100,000 for the sewer division.

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2. A rate of return of ten percent on the stipulated rate base.

3. A revenue requirement of $25,825 for the water division and a revenue requirement of $42,570 for the sewer division.

4. Quarterly rates as follows:

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

Water Division	
Commercial	
Class A	$250.00
Class B	$8.78/ccf
Residential	
Orchard Hill I	$45.75
Orchard Hill II	$45.75
Granite Ridge Condo Assoc.	$45.75
Other	$45.75
Sewer Division	
Commercial	
Class A	$320.00
Class B	$12.90/ccf
Residential	

Orchard Hill I	$79.35
Orchard Hill II	$79.35
Granite Ridge Condo Assoc.	$79.35
Other	$79.35

5. A temporary rate recoupment of the difference between the revenue level finally approved, and the revenue level provided for in the company's temporary rates by surcharge over a two year period in accordance with RSA 378:29 and in accordance with an attachment to the stipulation.

6. A review of operation and maintenance expenses when one year of historical data is available.

7. Installation of meters by January 1, 1990.

8. Identification and qualification of each item of plant by the company in accordance with the uniform system of accounts for water utilities. The company will file that information in its annual report.

9. Recoupment of $5,100.00 of rate case expense over a two year period, as further set forth in the stipulation.

10. Establishment of complete records in accordance with the commission's rules, by the company and maintenance at the company's business office, available for audit at all times.

III. *Commission Analysis*

The revenue requirement as developed between the staff and the company is supported by the evidence and is just and reasonable. Therefore, with one exception, we accept the stipulation for resolution of that particular issue. The proposed increase will be effective as of the date of this report and order.

"**[1,2]**" The commission has authority to grant temporary rates under RSA 378:27. If the permanent rates determined exceed the temporary rates, the public utility

> *shall be permitted* to amortize and recover, by means of a temporary increase over and above the rates finally determined, such sum as shall represent the difference between the gross income obtained from the rates prescribed in such temporary order and the gross income which would have been obtained under the rates finally determined if applied during the period such temporary order was in effect.

RSA 378:29 (emphasis added). These provisions ensure that a utility's property used in the public service is not confiscated

without just compensation under the United States and New Hampshire Constitutions. It should be noted that the consumer is protected by a similar provision. Under RSA 378:30, the commission has the authority to require utilities to refund to customers the difference between the amounts collected under temporary rates and permanent rates where permanent rates are set at lower levels.

We have set permanent rates at levels that are higher than temporary rates. Thus, the law requires that the company recoup the difference between permanent and temporary rates. The recoupment shall be calculated from the date of our temporary rate order, November 18, 1987, until the date of this report and order.

The following charts illustrate the amounts of the existing rates, the stipulated rates, the proposed temporary rate surcharge, and a temporary rate surcharge calculated over a four year period.

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(ms. 7 table) 1 2 3 4 5

(ms. 8 table) 1 2 3 4 5

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The commission will not allow the proposed two year recoupment period. Lakeland was informed in October of 1985 that it should file for permission to operate as a public utility. However, Lakeland did not file for this permission until June of 1987. The proposed rates, including the proposed recoupment, would raise some rates by 160%. For these two reasons we find it more appropriate to allow the recoupment over a four year period. This period will reflect a normally appropriate recoupment period of two years plus the period of time that the company was remiss in filing its petition.

Our order will issue accordingly.

FINAL ORDER

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

ORDERED, that with the exception of the period for recoupment of the difference between permanent and temporary rates, the proposed stipulation between the staff and Lakeland Management Company is approved; and it is

FURTHER ORDERED, that Lakeland shall file compliance tariff pages reflecting the increase, bearing an effective date of all bills rendered on or after November 2, 1988, and bearing the following notation “Authorized by NHPUC Order No.19,223 in Docket Nos. DE 87-111 and DE 87-112, dated November 2, 1988.”

By order of the Public Utilities Commission of New Hampshire this second day of November, 1988.

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Re Claremont Gas Corporation

DR 88-151
Order No. 19,225

New Hampshire Public Utilities Commission

November 3, 1988

ORDER revising the cost of gas adjustment rate of a propane gas distribution company.

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1. AUTOMATIC ADJUSTMENT CLAUSES, § 53 — Cost of gas adjustment clause — Rate adjustment — Over/undercollection — Propane gas distribution company.

[N.H.] The cost of gas adjustment rate of propane gas distribution company was revised to reflect a corrected calculation of past overcollections. p. 463.

2. AUTOMATIC ADJUSTMENT CLAUSES, § 54 — Cost of gas adjustment clause — Rate adjustment — Over/undercollection — Interest — Propane gas distribution company.

[N.H.] In a cost of gas adjustment clause proceeding, the commission directed that over- or undercollections experienced by a propane gas distribution company are to accrue interest at the prime rate reported in the *Wall Street Journal* effective November 1, 1988; the interest rate is to to be adjusted each quarter using the rate reported on the first day of the first month of a quarter. p. 463.

APPEARANCES: Ransmeier and Spellman by Dom S. D'Ambruoso, Esquire, on behalf of the Company; Eugene F. Sullivan, Finance Director and Mary Jean Newell, P.U.C. Examiner, on behalf of the Commission Staff.

By the COMMISSION:

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REPORT

"**[1, 2]**" On October 11, 1988 Claremont Gas Corporation (Claremont 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 for a 1988-89 Winter cost of gas adjustment (CGA) for effect November 1, 1988. That cost of gas adjustment was a credit of $(0.0474) per therm.

An Order of Notice was issued on October 4, 1988 setting the a hearing date of October 14, 1988 at 9:00 A.M.

On October 14, 1988 Claremont Gas Corporation submitted a revised CGA rate. The revised CGA was a surcharge of $0.0112 per therm. This revision was submitted to correct the Company's calculation of over/under collection and the related interest. This revision calculated

interest from May 1, 1988 instead of November 1, 1988 as the Company had calculated in its October 11, 1988 filing.

As this revision did not include the over collection from the 1986-87 Winter cost of gas reconciliation, the Company filed a third revision on October 31 , 1988. The revision establishes a credit of $(0.0121) per therm net of the franchise tax. When adjusted for the franchise tax the credit is $(0.0122) per therm.

Other issues discussed during the hearing were the lost and unaccounted for gas, company use gas, Company propane purchasing practices and the interest rate used when calculating the over/under collections.

Regarding the issue of the interest rate the Company witness felt the Company would have no problem using the same method used to calculate interest on Customer Deposits. This method was to adopt the use of the Prime Rate reported daily in the *Wall Street Journal.* The present policy is to use the rate reported on the first day of the month preceding the first month of a quarter. (The rate quoted on the first of December, March, June and September is to be used for quarters starting January, April, July and October). The revised method tends to keep the rate at a current basis. The witness felt the Company would have no problem with the revision.

Finally, the Commission raised the issue of the Champlain Pipeline and the potential for Claremont's utilization of natural gas. The possible length of distance of the pipeline passing by Claremont in Vermont or coming into the New Hampshire at a more northern point is one of the considerations of the Company. This Commission looks favorably on a possibly less expensive, dependable, alternative source of gas supply for utilities in the State of New Hampshire. We look forward to hearing from the Company on its progress concerning this issue.

Our order will issue accordingly.

ORDER

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

ORDERED, that 124TH Revised Page 12-2 of Claremont Gas Corporation NHPUC No. 9-Gas, issued October 6, 1988, providing for a cost of gas adjustment of $(0.0474) per therm be, and hereby is, rejected; and it is

FURTHER ORDERED, that 124th Revised Page 12-2 of Claremont Gas Corporation NHPUC No. 9-Gas, issued October 12, 1988, providing for a cost of gas adjustment of $0.0112 per therm be, and hereby is, rejected; and it is

FURTHER ORDERED, that 124th Revised Page 12-2 of Claremont Gas Corporation NHPUC No. 9 — Gas, issued October 27, 1988, providing for a cost of

gas adjustment of $(0.0121) per therm for the period of November 1, 1988 through April 30, 1989 is approved by this order, said rate to be effective with all billings issued on or after November 1, 1988; and it is

FURTHER ORDERED, that the over/under collection of the Claremont Gas Corporation Adjustment will accrue interest at the Prime Rate reported in the *Wall Street Journal* effective

November 1, 1988, as described and Ordered in Summer Cost of Gas docket DR 88-41. The rate is to be adjusted each quarter using the rate reported on the first day of the month preceding the first month of a quarter; and it is

FURTHER ORDERED, that public notice of this Cost of Gas Adjustment be given by one time publication in newspapers having general circulation in the territories served; and it is

FURTHER ORDERED, the above rate is to be adjusted by a factor of approximately 1% according to the utilities classification in the Franchise Tax Docket DR 83-205, Order No. 15,624.

By order of the Public Utilities Commission of New Hampshire this third day of November, 1988.

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NH.PUC*11/14/88*[52085]*73 NH PUC 464*BCLM Realty Trust

[Go to End of 52085]

73 NH PUC 464

Re BCLM Realty Trust

DE 88-033
Order No. 19,229

New Hampshire Public Utilities Commission

November 14, 1988

ORDER nisi exempting a water supplier from the rules of the public utility commission.

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1. PUBLIC UTILITIES, § 121 — Water — Service to 10 or fewer customers — Exemption from regulation.

[N.H.] Pursuant to state statute, RSA 362:4, the commission may exempt from its rules and regulations water systems that supply less than 10 customers, provided that the commission find that the exemption is consistent with the public good. p. 464.

2. PUBLIC UTILITIES, § 41 — Regulatory status — Exemption from regulation — Restricted service — To tenants — Water service.

[N.H.] A shopping center owner proposing to provide water service to five meters was exempted from commission rules and regulations where (1) the meters would serve the tenants of the shopping center, and (2) the billing of water service to the meters would be based exclusively on the cost of maintaining the system and would be allocated to the five tenants in accordance with the terms of their leases. p. 464.

By the COMMISSION:

ORDER

"**[1, 2]**" WHEREAS, BCLM Realty Trust, owner of the Pentucket Shopping Center, Route 125, Plaistow, NH; by petition filed February 19, 1988 has requested exemption from the rules of the Public Utilities Commission pursuant to RSA 362:4; and

WHEREAS, RSA 362:4 states "If the whole of such water system shall supply a less number of consumers than 10, each family, tenement, store or other establishment being considered a single consumer, the commission may exempt any such water company from any and all provisions of this title whenever the commission may find such exemption consistent with the public good; and

WHEREAS, the petitioner has stated in the petition and subsequent amendment dated October 24, 1988 that water service will be provided to five meters which will serve tenants of the shopping center; and

WHEREAS, the billing of water service to the meters will be based exclusively on the cost of maintaining the system and will be allocated to five tenants groups in accordance with the terms of their leases; and

WHEREAS, after investigation by the staff of the commission we find that exemption of BCLM Realty Trust from the rules of the commission under RSA 362:4 is consistent with the public good; and

WHEREAS, the public should be given an opportunity to respond in support of, or in opposition thereto; it is

ORDERED, that all persons desiring to respond to this 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 December 7, 1988 ; 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 November 23, 1988 and be documented by affidavit to be made on a copy of this order and filed with the commission; and it is

FURTHER ORDERED, *NISI* that BCLM Realty Trust is exempted from the rules of this commission for service to five water meters in the Pentucket Shopping Center; and it is

FURTHER ORDERED, that such exemption shall be effective on December 14, 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 fourteenth day of November, 1988.

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[Go to End of 52087]

73 NH PUC 469

Re Holiday Ridge Supply Company, Inc.

DF 87-210
Order No. 19,232

New Hampshire Public Utilities Commission

November 21, 1988

ORDER directing a utility to appear and show cause why it should not be prosecuted or subject to sanctions for failure to file an annual report.

FINES AND PENALTIES, § 5 — Grounds for imposition — Failure to file annual report.

[N.H.] A utility was directed to appear before the commission and show cause why it should not be prosecuted or subject to sanctions for failure to file an annual report.

By the COMMISSION:

ORDER

WHEREAS, Holiday Ridge Supply Company, Inc. was, by Order No. 18,905 (November 10, 1987) (72 NH PUC 528) ordered to appear before the commission at a hearing on November 20, 1987, to show cause why it should not be fined one hundred dollars per day for failure to file an annual report for the year ended

December 31, 1986, as required by, *inter alia*, the New Hampshire Code of Administrative Rules, PUC 607.06 and PUC 609.05; and

WHEREAS, Holiday Ridge did not appear at the show-cause hearing on November 20, 1987; and

WHEREAS, on August 5, 1988, Holiday Ridge filed with the commission a request for authorization to borrow money pursuant to RSA Chapter 369; and

WHEREAS, Holiday Ridge was advised by letter from the Public Utilities Commission dated August 15, 1988, that its financing request was incomplete and failed to resolve the company's failure to file required annual reports; and

WHEREAS, Holiday Ridge has not filed with the commission any justification for its failure

to comply with the laws of this state governing public utilities; it is

ORDERED that Holiday Ridge Supply Co., Inc.; its former Secretary and Treasurer, C. John Madden; its Treasurer, Betty Sue Hydren; and its Directors, Joseph Merchant, Roger Clapp, Carl Hydren, Johannes Meinhofer, Virginia Perhac, Leo Harrison and Richard Tucker appear before the Commission at a hearing at the offices of the commission, 8 Old Suncook Road, Building #1, Concord, New Hampshire at ten in the forenoon on the fifteenth day of December 1988, to show-cause why Holiday Ridge, Ms. Hydren or other agents and officers of the company should not be prosecuted in criminal proceedings pursuant to, *inter alia,* RSA 365:40, *et seq.,* or be subjected to other sanctions pursuant to, *inter alia,* RSA 374:17, RSA 374:41, *et seq.*

By order of the Public Utilities Commission of New Hampshire this twenty-first day of November, 1988.

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NH.PUC*11/21/88*[52088]*73 NH PUC 470*Public Service Company of New Hampshire

[Go to End of 52088]

73 NH PUC 470

Re Public Service Company of New Hampshire

Additional party: New England Telephone and Telegraph Company, Inc.

DR 88-166
Order No. 19,233

New Hampshire Public Utilities Commission

November 21, 1988

ORDER nisi authorizing an electric utility to provide service at a special contract rate to a customer with interruptible loads.

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1. RATES, § 211 — Special contract rates — Commission power to approve — Statutory standard.

[N.H.] The commission has authority under RSA 378:18 to approve special contracts for service at rates other than those fixed in the public utility's schedules, provided that special circumstances exist which render departure from the general schedules to be just and consistent with the public interest. p. 471.

2. RATES, § 322 — Electric rate design — Special contract rate — Interruptible loads.

[N.H.] An electric utility was conditionally authorized to provide service at a special contract rate to a customer that had interruptible loads but failed to meet the eligibility requirements for the utility's winter interruptible service rate; approval of the contract rate was consistent with the

commission's acceptance of a recommendation that special contracts for customers with interruptible loads that do not precisely meet the terms set forth for eligibility for the winter interruptible rate, but are reasonably consistent with the design of the interruptible rate, should be expeditiously approved. p. 471.

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By the COMMISSION:

ORDER

"[1, 2]" WHEREAS, on October 14, 1988, the New Hampshire Public Utilities Commission issued Report and Order No. 19,198 (73 NH PUC 409) approving tariff pages permitting Public Service Company of New Hampshire (hereinafter PSNH) to offer Winter Interruptible Service and Use of Customer Standby Generation Rate WI for effect on December 1, 1988; and

WHEREAS, in its Report the commission accepted the recommendations of the parties which included a recommendation for an expedited procedure for approving special contracts for customers with interruptible loads with operational characteristics that do not precisely meet the terms set forth in the tariff pages but are reasonably consistent with the rate design of Rate WI; and

WHEREAS, the commission has authority under N.H. RSA 378:18 to approve special contracts for service at rates other than those fixed in the public utility's schedules if special circumstances exist which render departure from the general schedules to be just and consistent with the public interest; and

WHEREAS, the proposed contract with New England Telephone Company (hereinafter NETEL) provides for modification to the AVAILABILITY and DEFINITIONS sections of Rate WI to permit service under Rate WI for four NETEL exchanges; and

WHEREAS, the commission finds that the terms of the Agreement between PSNH and NETEL are reasonably consistent with the terms of Rate WI, and PSNH has demonstrated that NETEL has evidenced special circumstances which render departure from the terms of Rate WI to be just and consistent with the public interest; and

WHEREAS, NETEL has agreed, in the absence of suitable metering equipment, to maintain a log for the purpose of recording the output of each standby generator; it is hereby

ORDERED NISI, that Public Service Company of New Hampshire be, and hereby is, authorized to implement the above-described special contract which shall be filed and made public as part of the published schedules of this utility; and it is

FURTHER ORDERED, that PSNH publish an attested copy of this order once in a newspaper having general circulation in that portion of the State in which operations are proposed to be conducted, such publication to be no later than November 25, 1988 and be documented by affidavit to be made on a copy of this order and filed with the commission on or before December 1, 1988; and it is

FURTHER ORDERED, that any interested party may file written comments and/or request an opportunity to be heard in this matter no later than November 30, 1988; and it is

FURTHER ORDERED, that this Order Nisi will be effective on December 1, 1988 unless there is a request for a hearing as provided above or unless the commission provides otherwise prior to the effective date; and it is

FURTHER ORDERED, that PSNH terminate the contract after a period of one year and begin discussions with NETEL to install suitable metering equipment at the four exchanges.

By order of the Public Utilities Commission of New Hampshire this twenty-first day of November, 1988.

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NH.PUC*11/21/88*[52089]*73 NH PUC 472*Public Service Company of New Hampshire

[Go to End of 52089]

73 NH PUC 472

Re Public Service Company of New Hampshire

Additional party: Department of Resources and Economic Development

DR 88-167
Order No. 19,234

New Hampshire Public Utilities Commission

November 21, 1988

ORDER nisi authorizing an electric utility to provide service at a special contract rate to a customer with interruptible loads.

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1. RATES, § 211 — Special contract rates — Commission power to approve — Statutory standard.

[N.H.] The commission has authority under RSA 378:18 to approve special contracts for service at rates other than those fixed in the public utility's schedules, provided that special circumstances exist which render departure from the general schedules to be just and consistent with the public interest. p. 472.

2. RATES, § 322 — Electric rate design — Special contract rate — Interruptible loads.

[N.H.] An electric utility was conditionally authorized to provide service at a special contract rate to a customer that had interruptible loads but failed to meet the eligibility requirements for the utility's winter interruptible service rate; approval of the contract rate was consistent with the commission's acceptance of a recommendation that special contracts for customers with interruptible loads that do not precisely meet the terms set forth for eligibility for the winter

interruptible rate, but are reasonably consistent with the design of the interruptible rate, should be expeditiously approved. p. 472.

By the COMMISSION:

ORDER

"[1, 2]" WHEREAS, on October 14, 1988, the New Hampshire Public Utilities Commission issued Report and Order No. 19,198 (73 NH PUC 409) approving tariff pages permitting Public Service Company of New Hampshire (hereinafter PSNH) to offer Winter Interruptible Service and Use of Customer Standby Generation Rate WI for effect on December 1, 1988; and

WHEREAS, in its Report the commission accepted the recommendations of the parties which included a recommendation for an expedited procedure for approving special contracts for customers with interruptible loads with operational characteristics that do not precisely meet the terms set forth in the tariff pages but are reasonably consistent with the rate design of Rate WI; and

WHEREAS, the commission has authority under N.H. RSA 378:18 to approve special contracts for service at rates other than those fixed in the public utility's schedules if special circumstances exist which render departure from the general schedules to be just and consistent with the public interest; and

WHEREAS, the proposed contract with DRED provides for modification of the definition of Interruptible Demand under Rate WI to eliminate an inequity that would exist for DRED under the standard definition of Interruptible Demand; and

WHEREAS, the commission finds that the terms of the Agreement between PSNH and DRED are reasonably consistent with the terms of Rate WI, and PSNH has demonstrated that DRED has evidenced special circumstances which render departure from the terms of Rate VI to be just and consistent with the public

interest; it is hereby

ORDERED NISI, that Public Service Company of New Hampshire be, and hereby is, authorized to implement the above-described special contract which shall be filed and made public as part of the published schedules of this utility; and it is

FURTHER ORDERED, that PSNH publish an attested copy of this order once in a newspaper having general circulation in that portion of the State in which operations are proposed to be conducted, such publication to be no later than November 25, 1988 and be documented by affidavit to be made on a copy of this order and filed with the commission on or before December 1, 1988; and it is

FURTHER ORDERED, that any interested party may file written comments and/or request an opportunity to be heard in this matter no later than November 30, 1988; and it is

FURTHER ORDERED, that this Order Nisi will be effective on December 1, 1988 unless

there is a request for a hearing as provided above or 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 November, 1988.

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NH.PUC*11/21/88*[52090]*73 NH PUC 473*Petrolane-Southern New Hampshire Gas Company, Inc.

[Go to End of 52090]

73 NH PUC 473

Re Petrolane-Southern New Hampshire Gas Company, Inc.

Additional respondent: Northern Utilities, Inc.

DR 88-109
Order No. 19,235

New Hampshire Public Utilities Commission

November 21, 1988

ORDER granting proprietary treatment to a contract for non-utility propane business of a gas distributor.

PROCEDURE, § 16 — Disclosure of evidence — Proprietary treatment — Non-utility business contract — Propane gas distributor.

[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 for proprietary treatment with respect to a contract for the non-utility propane business of a gas distributor.

By the COMMISSION:

ORDER

WHEREAS, on November 9, 1988, the staff of the New Hampshire Public Utilities Commission filed a motion to compel the contract between Bay State Gas Company and Petrolane, Gas Service Limited Partnership (Petrolane) for Petrolane's non-utility propane business; and

WHEREAS, on November 16, 1988, Petrolane-Southern New Hampshire Gas Company, Inc. (Southern) and Northern Utilities, Inc. (Northern) filed their joint response agreeing to provide the requested contract, to the commission and the

commission staff, in an *in camera* proceeding with a nondisclosure agreement; and

WHEREAS, the Southern and Northern originally objected to providing this contract, for among other reasons, because it is proprietary; and

WHEREAS, the Right to Know Law, RSA 91-A:5, IV exempts from public disclosure, "confidential, commercial, or financial information . . . ."; it is hereby

ORDERED, that Southern and Northern shall be granted proprietary treatment with respect to this contract, pursuant to RSA 91-A:5, IV, unless and until otherwise ordered.

By order of the Public Utilities Commission of New Hampshire this twenty-first day of November, 1988.

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NH.PUC*11/28/88*[52091]*73 NH PUC 474*Northern Utilities, Inc.

[Go to End of 52091]

73 NH PUC 474

Re Northern Utilities, Inc.

DR 88-148
Order No. 19,236

New Hampshire Public Utilities Commission

November 28, 1988

ORDER denying motion for rehearing of an order prohibiting a gas distribution company from including non-product costs in its cost of gas adjustment clause rate.

AUTOMATIC ADJUSTMENT CLAUSES, § 9 — Cost of gas adjustment clause — Cost elements — Non-product costs.

[N.H.] In denying a motion for rehearing of an order directing a gas distribution company to remove non-product costs from its cost of gas adjustment clause (CGAC), the commission reiterated that it does not intend to initiate automatic adjustment clauses to insulate utilities against all cost changes.

By the COMMISSION:

REPORT ON MOTION FOR REHEARING

On November 16, 1988, Northern Utilities, Inc. (Northern or company) moved for rehearing or clarification of report and order no. 19,209 (73 NH PUC 438) pursuant to RSA 541:3 and 4. Upon consideration of said motion, this report and attached order reaffirms and clarifies the position of the commission and denies the company's motion for rehearing.

A hearing on the merits was held on October 24, 1988. The company contended that certain non-product costs should be included in the Winter Cost of Gas. Specifically, the company included the cost of electricity in its Cost of Gas Adjustment (CGA). The commission disagreed stating that "there is a point when certain costs should be included in base rates. Basic operation and maintenance costs, such as electricity, should not be included in the cost of gas. The reason that the CGA was initiated in the first place was to insulate companies from dramatic changes in fuel prices."[1(38)]

The company has moved for a rehearing or clarification of this issue. The company in its motion states that it agrees with the commission in that general electricity is includable in base rates, however, it disagrees with the conclusion that electricity costs are properly excludable from CGA. The company contends that it uses electricity during peak periods for propane production which should be viewed as a cost of the propane itself rather than a separate expense. Motion at 2.

The commission first initiated a temporary purchase price adjustment in docket

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D-R 5994 dated April 2, 1971. The purpose of the surcharge was to allow the company to recoup the increased cost of gas supplied by pipeline companies. Since that time the commission had allowed gas utilities to recover cost changes in other supplemental fuels. The intention of these cost of gas adjustment clauses was to allow companies to recover changes in purchased gas costs and the costs of supplemental gas used during peak periods. We have allowed the direct costs of gas as part of our fuel clause. We have not allowed costs which are more properly included in base rates to be included in the costs that can be recovered in the fuel clause.

It may be true that, because the company uses compressors and other equipment powered by electricity to produce propane, its electric consumption for the production of propane varies directly with the amount of propane produced. But so do revenues from sales. Any unrecovered costs are then ultimately reflected in base rates.

Although we do not intend to include other costs in the CGA, we would point out that electric costs have stabilized in the past two years as a result of lower fuel costs and are not as variable as the company claims. It is also true that there are many costs which are directly related to the volume of gas. For example, handling expenses are directly related; however, those costs are included in base rates. From an accounting standpoint, the cost of electricity is includable in Account 1722, Other Production Supplies and Expense. Those expenses are generally categorized as fuel handling costs and are not included in inventory or purchased power.

In conclusion, this commission does not intend to initiate automatic adjustment clauses to insulate utilities against all of the changes in costs which may occur. We will look at the issue of electricity costs in the rate case that is presently pending before this commission, Docket No.

88-029. We will also require the company to provide data in that case which identifies the electricity costs during the test year that have not been charged to the proper operating accounts.

Our order will issue accordingly.

ORDER

Upon consideration of the foregoing Report On Motion for Rehearing, which is made a part hereof, it is hereby

ORDERED, that Northern Utilities, Inc.'s motion for rehearing be, and is hereby denied.

By order of the Public Utilities Commission of New Hampshire this twenty-eighth day of November, 1988.

FOOTNOTES

[1]DR 88-148, Report and Order No. 19,209 at 4 (73 NH PUC at 441).

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NH.PUC*11/29/88*[52092]*73 NH PUC 475*West Swanzey Water Company, Inc.

[Go to End of 52092]

73 NH PUC 475

Re West Swanzey Water Company, Inc.

DR 88-068
Order No. 19,239

New Hampshire Public Utilities Commission

November 29, 1988

ORDER granting a petition to establish a water utility and approving a request for permanent rates.

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1. RATES, § 595 — Water — Stipulated rates.

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[N.H.] Stipulated customer and consumption charges were approved in an order authorizing a company to provide water service as a public utility. p. 479.

2. CERTIFICATES, § 88 — Factors affecting grant or refusal — Public convenience and necessity.

[N.H.] Pursuant to state statute, a petition to provide service as a public utility shall be

granted only if it would be for the public good and not otherwise; the criteria for determining the public good are (1) the need for service, and (2) the ability of the applicant to provide service. p. 479.

3. CERTIFICATES, § 125 — Water utility — Factors affecting grant of certificate — Public convenience and necessity.

[N.H.] A company was authorized to provide water service as a public utility where the record evidence showed that (1) there was a need for the service, (2) the company was financially, administratively, technically, and generally able to provide service, and (3) the company had fulfilled the requirements of the Water Supply and Pollution Control Commission and the Water Resources Board. p. 479.

4. RETURN, § 115 — Water utility — Reasonableness — Capital market conditions — Company risk.

[N.H.] In an order authorizing a company to provide water service as a public utility, the commission approved stipulated rates designed to produce a 10% return on investment (which consisted entirely of equity capital); a 10% return was found to be just and reasonable in light of current capital market conditions and consideration of company risk and capital structure. p. 479.

5. VALUATION, § 192 — Property included or excluded — Used and useful property — Contributions in aid of construction — Water utility.

[N.H.] In an order authorizing a company to provide water service as a public utility, the commission approved a stipulated rate base that included used and useful plant less depreciation and excluded contributions in aid of construction. p. 479.

APPEARANCES: Dom S. D'Ambruoso, Esq., of Ransmeier & Spellman on behalf of West Swanzey Water Company; Mary C.M. Hain, Esq., on behalf of the staff of the New Hampshire Public Utilities Commission.

By the COMMISSION:

REPORT

The following report concerns the hearing on the merits of the captioned proceeding. It sets forth the positions of the parties, findings of fact and analysis. It allows the company to provide service as a utility, and approves the requested rates.

I. *Procedural History*

On May 8, 1988, West Swanzey Water Co., Inc. (the Company) filed a petition for authority to establish a water utility in a limited area in the town of West Swanzey, New Hampshire. This petition included a request for temporary rates for service now being provided.

On May 17, 1988, the office of the Consumer Advocate filed a notice of intervention. However, the Consumer Advocate did not appear at the hearing on the merits.

On September 13, 1988, Mr. Leonard R. Beaulieu requested permission to make a public statement. However, Mr. Beaulieu did not appear at the hearing on the merits.

Pursuant to an order of notice issued on

June 29, 1988, the commission held a prehearing conference on August 4, 1988. At the prehearing conference, the parties proposed a procedural schedule and discussed other procedural concerns.

The commission determined the appropriate procedural schedule in its Report Regarding Notice, Procedures and Schedule and Order no. 19,146 (August 22, 1988). This order scheduled a prehearing conference for 9:00 a.m. on October 17, 1988 and a hearing on all outstanding issues for 10:00 a.m. on October 17, 1988. It required parties seeking intervention to file motions by September 16, 1988.

At the prehearing conference the parties developed an oral agreement on all of the issues. The agreement was presented at the hearing on the merits.

II. *Positions of the Parties*

In its original testimony West Swanzey Water Company argued for a revenue requirement of $20,795. It proposed a quarterly fixed charge of $8.57 per customer and a consumption charge of $0.5531 per 100 cubic feet. It argued that these rates would allow it to earn the proposed revenue requirement.

In its prefiled testimony, the staff did not support or oppose the petition to establish a water utility. It recommended that rates be calculated that would allow the company to recover a revenue requirement of $17,308. The staff differed from the company in the methodology used to calculate the following operating expenses:

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

	Company	*Staff*
A. Rent	*$1,404*	*$ 974*
B. Depreciation	*1,007*	*754*
C. Amortization	*1,492*	*117*
D. Taxes — Property	*913*	*256*
E. Taxes — N.H. State	*328*	*268*
F. Taxes — Federal Income	*736*	*463*

As a result of negotiations, the parties stipulated to a revenue requirement of $20,805.00. They agreed to a customer charge of $6.82 per month and a consumption charge of $0.566 per 100 gallons of consumption. The customer charge is intended to compensate the company for depreciation, property tax, and amortization. The customer charge was recalculated in the settlement agreement to reflect a correction in the amount of property tax. The consumption charge was recalculated, in light of the change in the customer charge, to insure that the rates covered the revenue requirement.

III. *Findings of Fact*

A. Petition for Authority to Establish a Water Utility

The petitioner is incorporated in New Hampshire for the purpose of providing water service. The capital accounts of the company consist of 100% equity in the amount of $30,508. The

company has issued 300 shares of stock. The company is willing and able to make additional capital contributions or secure financing if necessary to finance additions to plant. The proposed service area is described as follows:

> Starting at the intersection of the south end of Winchester Street and Route 10 in West Swanzey, New Hampshire, proceed due east to the

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> Ashuelot River, follow the west bank of the river north to a point due east of the intersection of the north end of Winchester Street and Route 10 in West Swanzey, New Hampshire, go west to that intersection, then proceed in a westerly direction parallel to the north side of Forest Avenue for 2500 feet, proceed in a southerly direction parallel to the west side of Route 10 to a point due west of the starting point, then go east to the starting point.

The water system was initially installed in part by Cobble Hill Associates (Cobble Hill) and in part by Homestead Woolen Mills, Inc., (Homestead). By deed in December, 1986, Cobble Hill conveyed its interest in the water system to Homestead. The company has a contract to purchase all of the assets of Homestead's existing water system for the total purchase price of $26,000.00, conditioned upon commission approval of the franchise and approval of the petition for temporary rates.

The company intends to lease from Homestead the land upon which the wells, pumps, and associated equipment are located, and a two hundred foot radius around the wells to provide the protection required by the Water Supply and Pollution Control Division of the New Hampshire Department of Environmental Services. The company filed, on November 8, 1988, an unexecuted 99 year lease that it avers is substantially the form that will be executed by the parties at closing. The companies have agreed to hold the closing within thirty days of the commission order approving the franchise.

The water system consists of the following facilities: three gravel packed wells, three 100 square foot, heated cement block buildings, two 25 horsepower pumps, one 40 horsepower pump, a 5000 gallon storage tank, eight hydrants, forty meters, approximately 6,864 feet of eight-inch transit pipe, approximately 750 feet of eight-inch ductile iron pipe, approximately 900 feet of six-inch installed ductile iron pipe, and miscellaneous fittings.

There are presently forty customers: thirty-nine residential and one commercial customer. The petitioner anticipates a modest amount of growth in the franchise area. The company intends to provide fire protection. No public utility is serving the area.

The company intends to contract with Homestead for routine repair and maintenance. Outside contractors will install plant.

The present operations of this system satisfy the requirements of the Water Supply and Pollution Control Division concerning the suitability and availability of water. The system has also received approval from the Water Resources Board of the State of New Hampshire Department of Environmental Services.

The Selectmen of Swanzey are in favor of the West Swanzey Water Company request for a

franchise.

B. Rate Request

The stipulated rates are intended to allow the company to earn a revenue requirement of $20,805.00, calculated based on a rate base of $37,734.00, and a rate of return of 10%. The company's investment is financed entirely by equity. The return on equity is similar to that approved in other recent water company rate proceedings.

The plant-in-service is calculated based on the purchase price of the Homestead assets. The purchase price is based on the original cost less depreciation. The Cobble Hill distribution system was given to the

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company and thus is treated as a contribution in aid of construction and does not earn a rate of return.

The company utilized several estimates to determine certain rate base amounts and expenses. The parties agreed the use of estimates for determining these rate base amounts and expenses in this case but agreed that the use of the estimates would not establish any precedent.

The rent expense was calculated based on: 1) a 10% return on the assessed value of the land as if it were in the rate base, 2) the tax effect on the return, and 3) the property tax on the land. This lease expense is calculated based on the assumption that within five years the utility will serve 100 customers. Thus, forty percent of the cost of the lease is allocated to the forty existing customers.

The customer charge was calculated by: determining the total demand-related charge, reducing this charge by an estimated fire protection charge, and dividing the remainder among sixty customers. The annual consumption is based on seven and one half months of actual consumption annualized by a sixty customer base. The consumption charge is computed by dividing the non-fixed costs by the annualized consumption.

The company calculated rates based on sixty customers for two reasons. First, it assumed that the number of customers will rapidly increase to sixty. Second, it found that it would be too burdensome to require forty customers to pay its fixed costs. Allocating its revenue requirement among forty customers could produce rates of approximately $500.

IV. *Commission Analysis*

A. Petition for Authority to Establish a Water Utility

"[1-5]" We find that the petition to provide service as a public utility 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 at 5, 70 NH PUC 563, 566 (June 27, 1985), we stated our criteria for determining the public good as: 1) the need for service, and 2) the ability of the applicant to provide service.

The standard 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 the applicant.

Re International Generation & Transmission Co., DSF 82-30, order no. 15,755 at —, 67 NH PUC 478, 484 (July 9, 1982).

The record shows a need for the service as the company is currently providing the service. The record also demonstrates that the company is financially, administrative, technically, and generally able to provide service.

RSA 374:22, III provides that no water company shall obtain commission approval to operate as a public utility without first satisfying any requirements of the Water Supply and Pollution Control Commission and the Water Resources Board concerning the suitability and availability of water. The evidence shows that the company has fulfilled these requirements.

B. Rate Request

We approve the stipulated rates. The commission determines 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 378:27. The commission must also set rates that will allow the utility to earn a just and reasonable rate of return on a just and reasonable rate base. RSA 378:28.

The facts show that the proposed rates are intended to produce a 10% return. Based on current capital market conditions and consideration of company risk and capital structure, the requested 10% common equity return is found to be just and reasonable for West Swanzey Water Company, Inc. at the present time. The rate base is just and reasonable because it includes used and useful plant less depreciation and because it does not include contributions in aid of construction.

Our order will issue accordingly.

ORDER

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

ORDERED, that West Swanzey Water Company's petition for permission to provide service as a public utility is approved; and it is

FURTHER ORDERED, that the request for permanent rates is approved; and it is

FURTHER ORDERED, that the company shall file compliance tariffs one week from the date of this order in accordance with the foregoing report and containing all of the company's terms and conditions of service, for effect on the date of filing and bearing the following

notation: “Authorized by NHPUC Order no. 19,239 in Docket DE 88-068, issued November 29, 1988.”

By order of the Public Utilities Commission of New Hampshire this twenty-ninth day of November, 1988.

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NH.PUC*11/29/88*[52093]*73 NH PUC 480*Claremont Gas and Light Company

[Go to End of 52093]

73 NH PUC 480

Re Claremont Gas and Light Company

DE 87-256
Order No. 19,242

New Hampshire Public Utilities Commission

November 29, 1988

ORDER requiring a gas distribution company to submit a report detailing its training procedures and emergency plans.

GAS, § 5.1 — Safety rules and regulations — Training procedures — Emergency plans — Distribution company.

[N.H.] A gas distribution company that had experienced an outage as a result of improper implementation of emergency plans and procedures was directed to submit a report detailing its training procedures and emergency plans.

By the COMMISSION:

ORDER

WHEREAS, the Claremont Gas and Light Company (Claremont) submitted a report dated December 17, 1987 concerning an incident that caused an outage effecting several hundred customers; and

WHEREAS, the commission held a hearing on January 19, 1988 on the matter

to determine whether Claremont was in noncompliance with applicable gas safety laws, rules and regulations; and

WHEREAS, the company testified that a probable cause to the sequence of events that led to the outage and improper implementation of their emergency plans and procedures was a lack of training; and

WHEREAS, the company stated that a review of their emergency plans and procedures with necessary modifications and/or updates will be completed probably by April 1, 1988; and

WHEREAS, the regional manager stated that he will personally start training company personnel by May, 1988 and complete this first time basis by June 1, 1988 with subsequent training sessions; and

WHEREAS, the company stated there was a need to review their distribution system and developed a map showing load characteristics for possible sectionalizing and also to make a system analysis; and

ORDERED, that Claremont submit a report to the commission by December 15, 1988 explaining in detail their completed training, studies and reviews of emergency plans and procedures; and it is

FURTHER ORDERED, that said report should address, but not necessarily be limited to, the following information:

1. Submit revised Emergency plans and Procedures showing modifications and/or updates and date this was completed.

2. Training personally given by regional manager to all employees with dates and list of attendees.

3. Results of system analysis and copy of map that was developed to show load characteristics and determination of valve sectionalizing of system and include the dates the company completed each of these studies.

By order of the Public Utilities Commission of New Hampshire this twenty-ninth day of November, 1988.

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NH.PUC*11/29/88*[52094]*73 NH PUC 481*Public Service Company of New Hampshire

[Go to End of 52094]

73 NH PUC 481

Re Public Service Company of New Hampshire

DR 88-184
Order No. 19,244

New Hampshire Public Utilities Commission

November 29, 1988

ORDER granting an electric utility's motion to extend the time requirement for filing exhibits in support of the energy cost recovery mechanism component of its rates.

AUTOMATIC ADJUSTMENT CLAUSES, § 59 — Practice and procedure — Energy cost recovery mechanism — Extension of time requirement for filing exhibits — Electric utility.

[N.H.] An electric utility that was involved in a complex bankruptcy proceeding was granted an extension of the time requirement for filing exhibits in support of the energy cost recovery mechanism (ECRM) component of its rates; it was found that the time extension would (1) assist the resolution of the bankruptcy proceeding, and (2) not prevent the commission from establishing an ECRM rate with an effective date of January 1, 1989, even if the order relating thereto were issued thereafter; the utility was directed to use the current ECRM rate for billing purposes until a new rate, which will be effective retroactively to January 1, 1989, is set.

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By the COMMISSION:

ORDER

WHEREAS, the Energy Recovery Mechanism for Public Service Company of New Hampshire provides for a six month forecast to be analyzed and evaluated at a hearing prior to January 1 and July 1 of each year and in accordance therewith; and

WHEREAS, Public Service Company of New Hampshire (PSNH) has filed a motion to suspend the time requirement for filing its exhibits in support of the ECRM component of its rates for the six month period ending June 30, 1989; and

WHEREAS, PSNH states that it is currently engaged in discussions with the State of New Hampshire in an effort to achieve consensual resolution of issues involved in PSNH's reorganization proceeding under Chapter 11 of the United States Bankruptcy Code; and

WHEREAS, the Attorney General of the State of New Hampshire and PSNH allege that the issues in the bankruptcy proceeding are many and complex, and maintenance of the status quo in the present proceeding will substantially assist those discussions; and

WHEREAS, PSNH stipulates that suspension of the filing requirement will not prevent the commission from establishing an ECRM rate component with an effective date as of January 1, 1989, even if the Order relating thereto is issued thereafter; and

WHEREAS, the Attorney General of the State of New Hampshire concurs in this motion; it is

ORDERED, that the motion is granted and PSNH will be required to file its exhibits and testimony on January 2, 1989; and it is

FURTHER ORDERED, that a hearing be held, pursuant to RSA 378:3-a, before said Public

Utilities Commission at its office in Concord, 8 Old Suncook Road, Building #1 in said State at ten o'clock in the forenoon of the thirteenth day of January 1989; and it is

FURTHER ORDERED, that Public Service Company of New Hampshire notify all persons desiring to be heard to appear at said hearing by causing an attested copy of this order to be published once in a newspaper having general circulation in that portion of the state in which operations are proposed to be conducted, such publication to be no later than December 28, 1988, said publication to be documented by affidavit filed with this office on or before the date of the hearing; and it is

FURTHER ORDERED, that pursuant to RSA 541-A:17 and Puc 203.02, any party seeking to intervene in this 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, the ECRM rate currently in effect will be used for billing purposes until a new rate is set as a result of the aforementioned hearing. The rate that is set after the hearing will be effective retroactively to January 1, 1989; and it is

FURTHER ORDERED, that PSNH shall prefile with the commission all its direct testimony and exhibits, with copies to other parties of record, at least (7) days prior to the hearing, pursuant to Puc 202.08.

By order of the Public Utilities Commission of New Hampshire this twenty-ninth day of November, 1988.

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NH.PUC*11/30/88*[52095]*73 NH PUC 483*Public Service Company of New Hampshire

[Go to End of 52095]

73 NH PUC 483

Re Public Service Company of New Hampshire

Additional applicant: Bretton Woods Ski Area

DR 88-179
Order No. 19,245

New Hampshire Public Utilities Commission

November 30, 1988

ORDER nisi authorizing an electric utility to provide service at a special contract rate to a customer with interruptible loads.

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1. RATES, § 211 — Special contract rates — Commission power to approve — Statutory standard.

[N.H.] The commission has authority under RSA 378:18 to approve special contracts for service at rates other than those fixed in the public utility's schedules, provided that special circumstances exist which render departure from the general schedules to be just and consistent with the public interest. p. 483.

2. RATES, § 322 — Electric rate design — Special contract rate — Interruptible loads.

[N.H.] An electric utility was conditionally authorized to provide service at a special contract rate to a customer that had interruptible loads but failed to meet the eligibility requirements for the utility's winter interruptible service rate; approval of the contract rate was consistent with the commission's acceptance of a recommendation that special contracts for customers with interruptible loads that do not precisely meet the terms set forth for eligibility for the winter interruptible rate, but are reasonably consistent with the design of the interruptible rate, should be expeditiously approved. p. 483.

By the COMMISSION:

ORDER

"**[1, 2]**" WHEREAS, on October 14, 1988, the New Hampshire Public Utilities Commission issued Report and Order No. 19,198 (73 NH PUC 409) approving tariff pages permitting Public Service Company of New Hampshire (hereinafter PSNH) to offer Winter Interruptible Service and Use of Customer Standby Generation Rate WI for effect on December 1, 1988; and

WHEREAS, in its report the commission accepted the recommendations of the parties which included a recommendation for an expedited procedure for approving special contracts for customers with interruptible loads with operational characteristics that do not precisely meet the terms set forth in the tariff pages but are reasonably consistent with the rate design of Rate WI; and

WHEREAS, the commission has authority under N.H. RSA 378:18 to approve special contracts for service at rates other than those fixed in the public utility's schedules if special circumstances exist which render departure from the general schedules to be just and consistent with the public interest; and

WHEREAS, the proposed contract with Bretton Woods provides for modification of the definition of Interruptible Demand under Rate WI to eliminate an inequity that would exist for Bretton Woods under the standard definition of Interruptible Demand; and

WHEREAS, the commission finds that the terms of the Agreement between PSNH and Bretton Woods are reasonably consistent with the terms of Rate WI, and PSNH has demonstrated that Bretton Woods has evidenced special circumstances which render departure from the terms of Rate WI to be just and consistent with the public interest; it is hereby

ORDERED NISI, that Public Service Company of New Hampshire be, and hereby is, authorized to implement the above-described special contract which shall be filed and made

public as part of the published schedules of this utility; and it is

FURTHER ORDERED, that PSNH publish 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 5, 1988 and be documented by affidavit to be made on a copy of this order and filed with the commission on or before December 23, 1988.

FURTHER ORDERED, that any interested party who objects to or wishes to amend this order should file such objection or proposed amendment by December 23, 1988. If a proposed amendment or objection is filed, the commission will promptly schedule a hearing thereon with the rates continued in this contract being subject to refund should the commission so order; and it is

FURTHER ORDERED, that this order nisi will be effective on December 1, 1988 unless the commission provides otherwise in a supplemental order issued prior to the effective date.

By Order of the Public Utilities Commission of New Hampshire this thirtieth day of November, 1988.

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NH.PUC*12/01/88*[52096]*73 NH PUC 484*Southern New Hampshire Water Company

[Go to End of 52096]

73 NH PUC 484

Re Southern New Hampshire Water Company

DE 88-112
Order No. 19,249

New Hampshire Public Utilities Commission

December 1, 1988

ORDER denying a motion to dismiss a petition for reconsideration and investigation of the commission's grant of authority to operate as a water public utility within a village district and establishing a procedural schedule for hearings on the petition.

PROCEDURE, § 32 — Rehearings and reopenings — Operating authority — Motion to dismiss — Statutory bases.

[N.H.] Where a water utility was authorized to operate as a public water utility in a limited area of a village district, and that village district filed a petition for investigation and reconsideration of that authority, a subsequent motion to dismiss that petition for reconsideration was denied; the commission found several statutory bases to investigate whether or not it could alter, amend or set aside the order granting authority to engage in business as a public utility.

APPEARANCES: Margaret H. Nelson, Esq. of Sulloway, Hollis & Soden on behalf of the Amherst Village District; Edmund J. Boulin, Esq. of Boulin & Solomon on behalf of Southern New Hampshire Water Company, Inc.; and Mary C.M. Hain, Esq. on behalf of the Staff of the New Hampshire Public Utilities Commission.

By the COMMISSION:

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REPORT ON MOTION TO DISMISS

This report concerns Southern New Hampshire Water Company, Inc.'s motion to dismiss the captioned petition. It sets forth the positions of the parties, analyzes the law, and denies the motion to dismiss. It also determines a procedural schedule that includes a view of the franchise.

I. *Procedural History*

On September 26, 1983, the New Hampshire Public Utilities Commission authorized Southern New Hampshire Water Company, Inc. (Southern) to operate as a public water utility in a limited area of the Town of Amherst. *Re Southern New Hampshire Water*, DE 83-244, report and order no. 16,655 (Sept. 26, 1983) (68 NH PUC 565). On August 4, 1988, the Amherst Village District (AVD) petitioned the commission, pursuant to RSA 365:1 and RSA 365:28, to commence an investigation and reconsider report and order no. 16,655.

On August 26, 1988, Southern filed a motion to dismiss the petition. On September 13, 1988, AVD filed an objection to the motion to dismiss. The commission issued order no. 19,183 on September 27, 1988, setting a hearing on the motion to dismiss on October 12, 1988.

II. *Positions of the Parties*

A. Petition of Amherst Village District

AVD argues, *inter alia*, that, due to the following alleged circumstances, the continuation of Southern's franchise in Amherst is no longer in the public interest.

1. The commission approved the water service contract between Pennichuck Water Works and the Town of Milford. See *Re Pennichuck Water Works*, Docket DR 87-167, report and order no. 19,027 (Mar. 7, 1988) (73 NH PUC 88). To implement the contract, Pennichuck will construct a pipeline through the Town of Amherst.

2. AVD serves customers from only one well and is urgently interested in obtaining an additional long term source of supply. AVD has entered into a water supply contract with Pennichuck to obtain water from the Milford main.

3. Construction of a similar pipeline by Southern would be uneconomic and duplicative. Thus, Southern would only try to serve Amherst by wells which are an unreliable long-term source of supply.

4. AVD's voters approved a $1,200,000 interconnection with the Milford main. To make

the interconnection economically feasible, AVD must be able to serve all customers along the interconnection.

5. The AVD voters have voted to seek to acquire any interests of Southern in an area north of Route 101-A in Amherst, pursuant to RSA 38.

6. Southern only serves 30 customers in the Bon Terrain Industrial Park and Pilgrim Hills. Southern did not take any steps to provide service in the franchise area until after AVD announced its plan to expand its district.

7. Southern has no customers and little, if any, investment north of Route 101-A. AVD should have to pay little, if any,

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compensation for the franchise. Southern's franchise has “little or no value” since “it was merely a right acquired but not vested by any investment or reliance.” *Re Lakes Region Water Co.*, DE 86-065, report and supplemental order no. 18,682 (May 21, 1987) at 12 (72 NH PUC 186).

B. Southern New Hampshire Water Company's Motion to Dismiss

Southern argues, *inter alia*, that AVD lacks standing to make any claim because it fails to state a proper statutory basis for relief. It contends that AVD has not alleged a factual basis or violation of law, franchise, charter, or commission order required under RSA 365:1 for a complaint, nor facts necessary under RSA 374:28 for withdrawal of its franchise.

Southern contends that AVD does not have the legal authority, under RSA 52:24, to act on AVD's proposals and thus does not have standing to bring the petition. Southern alleges that it has invested substantial sums in the franchise, including areas north of Route 101-A in Amherst.

Southern argues that the commission's decision in docket DE 86-065 is not appropriate precedent since it concerned a municipality. A municipality, it avers, can operate anywhere in municipal boundaries but a village district may only operate within its established district. Finally, Southern contends that AVD's allegations concerning back up water supply are without credibility and could result in injustice to the AVD members.

C. Amherst Village District's Objection to the Motion to Dismiss

AVD argues that nothing in RSA 52:24 affects the validity of AVD's status as a village district. AVD avers that it has standing in an investigation of Southern's franchise because the investigation involves legal, financial, and political matters of concern to AVD. It contends that it has the legal authority to carry out its proposal.

AVD contends that RSA 365:1 and 374:28 provide a proper statutory basis for the investigation. In addition, it argues, RSA 365:5 allows the commission to conduct an inquiry upon its own motion into “any act or thing have been done, or having been omitted or proposed by a public utility.”

AVD states that RSA 365:28 allows the commission to alter, amend, or set aside any previous order. It believes it can show changed circumstances to warrant a change in the franchise order, and that it can provide service at lower rates than Southern.

III. *Commission Analysis*

We have carefully reviewed the parties' arguments. We deny the motion to dismiss for the following reasons.

We will consider this case on our own motion pursuant to RSA 365:5, as it is a matter of concern to the ratepayers, AVD and Southern. AVD has shown that it has an interest sufficient to intervene under RSA 541-A:17. Since it brought the matter to our attention, it will be a necessary party.

We do not have authority to consider whether AVD is a valid village district, or whether it has the legal authority to carry out its proposal under RSA 52:24. However, such determinations are not required as we are investigating upon our own motion.

There are several statutory bases for this investigation. AVD has alleged that it is no

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longer in the public good for Southern to serve in Amherst. We will investigate, pursuant to our own motion, to determine if there is a basis a) to alter, amend or set aside an order, pursuant to RSA 365:28; b) to withdraw authority to engage in business, pursuant to RSA 374:28; c) to investigate under RSA 365:1; or d) to find that franchise authority should no longer be exercised under RSA 374:27.

We will view the franchise area, as part of our investigation of this matter. The following procedural schedule will govern this investigation.

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

Document or Event	*Filing or Event Date*
AVD's Testimony	December 12, 1988
Staff's and Intervenor's Data Requests	December 20, 1988
AVD's Data Responses	January 6, 1989
Staff's and Intervenor's Testimony	January 20, 1989
AVD's Data Requests	February 3, 1989
Staff's and Intervenor's Data Responses	February 17, 1989
View of Franchise	March 9, 1989 at 9:00 a.m.
Hearing on the Merits 8 Old Suncook Road, Bldg. 1 Concord, New Hampshire	March 9, 1989 immediately after the view and March 10, 1989 at 10:00 a.m.
Legal Memoranda	March 17, 1989

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's motion to dismiss the captioned petition is denied; and it is

FURTHER ORDERED, that the parties will comply with the procedural schedule in the foregoing report.

By order of the Public Utilities Commission of New Hampshire this first day of December, 1988.

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NH.PUC*12/01/88*[52097]*73 NH PUC 487*Blodgett Landing Water Company

[Go to End of 52097]

73 NH PUC 487

Re Blodgett Landing Water Company

DE 88-093
Order No. 19,250

New Hampshire Public Utilities Commission

December 1, 1988

PETITION for authority to discontinue water service; granted.

SERVICE, § 277 — Abandonment, discontinuance, and substitution — Water utility — Declining customer base.

[N.H.] A water utility that provided seasonal service to 12 customers was allowed to discontinue water service due to a declining customer base where the commission determined that continuation of water service under clearly uneconomic conditions was not in the public good.

APPEARANCES: Richard C. Butterfield for Blodgett Landing Water Company; Mr. & Mrs. Picano and Mr. & Mrs. Lanza, customers; Sarah Voll, James Nicholson and Robert Lessels for the Commission Staff.

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By the COMMISSION:

REPORT

I. *PROCEDURAL HISTORY*

On June 22, 1988, Blodgett Landing Water Company filed a petition seeking authority to discontinue the distribution of water following the 1989 season.

An order of notice was issued setting a hearing on the merits for October 13, 1988.

II. *PETITION OF BLODGETT LANDING*

In this petition, the water company seeks to discontinue service to 12 current customers. The service provided is seasonal beginning generally in mid-May and terminating in mid-October. Water is drawn from Lake Sunapee, chlorinated, and pumped through plastic pipe of 1-1/4 inch diameter, some of which is underground with the remainder laid on top of the ground. In the past ten years the customer base has decreased from 70 to the current 12; largely because the customers developed individual supplies for use at their property during colder periods when Blodgett Landing cannot supply water.

Mr. Butterfield testified that the pump and chlorinator now in use, will shortly need replacing. The capital required for new equipment, the current deficit operation, the uncompensated time spent to monitor the system, and the decreasing customer base have resulted in this petition to discontinue service as soon as possible.

III. *POSITION OF CERTAIN CUSTOMERS*

A motion to intervene was filed by Irving Crandall and Steven & Midge Picano, on October 11, 1988. The motion was granted from the bench during this proceeding.

The motion, and statements made at the hearing by Mr. & Mrs. Picano and Mr. & Mrs. Lanza plead that to discontinue the water service would deny fire protection to current customers and neighboring property of non-customers. Further, there are concerns that because of the small lot sizes, one well might interfere, or draw down, a neighbors well. Leaching from abandoned cess pools is also a concern. It is the desire of those customers at the hearing, that service continue through the 1989 season to allow for the establishment of wells or a possible take over by a customer group.

IV. *COMMISSION ANALYSIS*

We are aware of the economic and operational, as well as regulatory, problems of small water systems such as this one. A very real problem is the level of rates charged to support today's plant investment which is made worse as the customer base decreases. Mr. Butterfield testified that, with the existing rates and resulting revenues, no compensation has been available for his time spent in operating the system.

In the most recent docket regarding a petition to discontinue water service (DE 86-37, Order No. 18,295, 71 NH PUC 357) we determined that the continuation of water service under clearly un-economic conditions was not in the public good. We make the same finding in this case.

Mr. Butterfield has indicated a willingness to continue the water system through the 1989 season and to provide the name and address of the current customers. This additional season of service by Blodgett

Landing will provide time for communication amongst the customers with a view towards possible purchase of the water system or the development of wells. We will require that Mr. Butterfield communicate with the customers as to the possible purchase of the water system and to notify this commission by July 15, 1989, of the status of such purchase.

We will require that the Blodgett Landing Water Company continue its service through the 1989 season at existing rates, at the end of which service may be discontinued. In the interim period we would encourage the existing customers to communicate with each other as to the possibility of acquiring joint ownership of the water system.

Our order will issue accordingly.

ORDER

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

ORDERED, that Blodgett Landing Water Company is authorized to discontinue operation as a water public utility at the conclusion of the 1989 operating season; and it is

FURTHER ORDERED, that Mr. Butterfield shall communicate with the customers as to the possible purchase of the water system and notify this commission by July 15, 1989, of the status of such purchase; and it is

FURTHER ORDERED, that Blodgett Landing Water Company notify this commission, in writing as of the date of such discontinuance.

By order of the Public Utilities Commission of New Hampshire this first day of December, 1988.

*Chairman Vincent J. Iacopino did not participate in these proceedings.

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NH.PUC*12/01/88*[52098]*73 NH PUC 489*Public Service Company of New Hampshire

[Go to End of 52098]

73 NH PUC 489

Re Public Service Company of New Hampshire

Additional applicant: Union Telephone Company

DR 88-186
Order No. 19,251

New Hampshire Public Utilities Commission

December 1, 1988

ORDER nisi authorizing an electric utility to provide service at a special contract rate to a

customer with interruptible loads.

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1. RATES, § 211 — Special contract rates — Commission power to approve — Statutory standard.

[N.H.] The commission has authority under RSA 378:18 to approve special contracts for service at rates other than those fixed in the public utility's schedules, provided that special circumstances exist which render departure from the general schedules to be just and consistent with the public interest. p. 490.

2. RATES, § 322 — Electric rate design — Special contract rate — Interruptible loads.

[N.H.] An electric utility was conditionally authorized to provide service at a special contract rate to a customer that had interruptible loads but failed to meet the eligibility requirements for the utility's winter interruptible service rate; approval of the contract rate was consistent with the commission's acceptance of a recommendation that special contracts for customers with interruptible loads that do not precisely meet the terms set forth for eligibility for the winter interruptible rate, but are reasonably consistent with the design of the interruptible rate, should be expeditiously approved. p. 490.

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By the COMMISSION:

ORDER

"[1, 2]" WHEREAS, on October 14, 1988, the New Hampshire Public Utilities Commission issued Report and Order No. 19,198 (73 NH PUC 409) approving tariff pages permitting Public Service Company of New Hampshire (hereinafter PSNH) to offer Winter Interruptible Service and Use of Customer Standby Generation Rate WI for effect on December 1, 1988; and

WHEREAS, in its report the commission accepted the recommendations of the parties which included a recommendation for an expedited procedure for approving special contracts for customers with interruptible loads with operational characteristics that do not precisely meet the terms set forth in the tariff pages but are reasonably consistent with the rate design of Rate WI; and

WHEREAS, the commission has authority under N.H. RSA 378:18 to approve special contracts for service at rates other than those fixed in the public utility's schedules if special circumstances exist which render departure from the general schedules to be just and consistent with the public interest; and

WHEREAS, the proposed contract with Union Telephone Company provides for modification of the definition of Interruptible Demand under Rate WI to eliminate an inequity that would exist for Union Telephone Company under the standard definition of Interruptible Demand; and

WHEREAS, the commission finds that the terms of the Agreement between PSNH and Union Telephone Company are reasonably consistent with the terms of Rate WI, and PSNH has demonstrated that Union Telephone Company has evidenced special circumstances which render departure from the terms of Rate WI to be just and consistent with the public interest; it is hereby

ORDERED NISI, that Public Service Company of New Hampshire be, and hereby is, authorized to implement the above-described special contract which shall be filed and made public as part of the published schedules of this utility; and it is

FURTHER ORDERED, that PSNH publish 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 5, 1988 and be documented by affidavit to be made on a copy of this order and filed with the commission on or before December 23, 1988; and it is

FURTHER ORDERED, that any interested party who objects to or wishes to amend this order should file such objection or proposed amendment by December 23, 1988. If a proposed amendment or objection is filed, the commission will promptly schedule a hearing thereon with the rates continued in this contract being subject to refund should the commission so order; and it is

FURTHER ORDERED, that this order nisi will be effective on December 1, 1988 unless the commission provides otherwise in a supplemental order issued prior to the effective date.

By Order of the Public Utilities Commission of New Hampshire this first day of December, 1988.

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NH.PUC*12/02/88*[52086]*73 NH PUC 465*Bryant Woods Water Company, Inc.

[Go to End of 52086]

73 NH PUC 465

Re Bryant Woods Water Company, Inc.

DE 87-226
Order No. 19,230

New Hampshire Public Utilities Commission

December 2, 1988

ORDER granting a petition to establish a water utility and approving a request for permanent rates.

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1. CERTIFICATES, § 88 — Factors affecting grant of refusal — Public convenience and

necessity.

[N.H.] Pursuant to state statute, a petition to provide service as a public utility shall be granted only if it would be for the public good and not otherwise; the criteria for determining the public good are (1) the need for service, and (2) the ability of the applicant to provide service. p. 468.

2. CERTIFICATES, § 125 — Water utility — Factors affecting grant of certificate — Public convenience and necessity.

[N.H.] A company was authorized to provide water service as a public utility where the record evidence showed that (1) there was a need for the service, (2) the company was financially, administratively, technically, and generally able to provide service, and (3) the company had fulfilled the requirements of the Water Supply and Pollution Control Commission and the Water Resources Board. p. 468.

3. RATES, § 595 — Water — Commission

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approval.

[N.H.] Rates requested by a utility for water service to be provided to a new development were accepted where it was found that (1) the requested rate base consisted of property used by the utility in the public service, (2) the requested rate of return (10%) was the same as that allowed to similarly situated utilities, and (3) the rate structure fairly allocated costs among customer classes. p. 468.

APPEARANCES : Stephen J. Noury on behalf of Bryant Woods Water Company, Inc.; Robert Lessels on behalf of the staff of the New Hampshire Public Utilities Commission.

By the COMMISSION:

REPORT

I. *Procedural History*

On November 16, 1987, Bryant Woods Water Company, Inc. (Bryant Woods) filed a petition for permission to establish a water utility in the southern portion of the Town of Atkinson, New Hampshire and tariff pages to set permanent rates. On January 5, 1988, the commission issued an order of notice scheduling a prehearing conference on February 10, 1988.

On March 22, 1988, the commission issued report and order no. 19,037 (73 NH PUC 51). It found that the petitioner had not complied with RSA 374:22 (supp. 1987) because it had not filed approvals from the Water Supply and Pollution Control Division (Water Supply) and the Water Resources Division (Water Resources) of the Department of Environmental Services. It required the petitioner to file an amended complete petition in compliance with N.H. Admin. Code, PUC 204.01(a)(3).

On April 22, 1988, Bryant Woods filed a new petition seeking authority to establish a water

utility in the southern portion of the Town of Atkinson (as further described in the petition). By an order of notice dated May 11, 1988, a prehearing conference was scheduled on July 12, 1988. By report and order no. 19,129 (July 18, 1988) the commission approved the procedural schedule proposed by the parties at the prehearing conference. This order scheduled a hearing on August 18, 1988.

At the hearing on the merits the staff requested that the petitioner provide a statement from Water Supply concerning levels of radium contamination in one of the company's wells. Bryant Woods provided a letter on November 4, 1988 that complied with this request.

The Town of Atkinson did not appear in opposition to or support of the petition.

II. *Positions of the Parties*

Bryant Woods argued that the commission should approve the petition. The staff did not support or oppose the petition. It simply asked questions to develop a more complete record.

III. *Findings of Fact*

The petition map shows a service area consisting of the entire area south of Bryant Woods' existing Walnut Ridge service area within the Town of Atkinson. Bryant Woods is developing a condominium development in the service area. On December 1, 1987, it received approval from Water Supply for a water system to serve the condominium development (106 units). At the hearing, Bryant Woods stated that the petition and the proposed

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tariff were submitted to serve only these 109 units. However, it stated that it is also considering constructing condominium developments in other portions of the franchise area (Phase II). Thus, on April 18, 1988 it obtained Water Supply and Pollution Control approval to build a system to serve an additional 145 customers. The construction of the water system is complete except for the water meters which shall be installed within two days of commission approval.

Bryant Woods states that it will request any additional approvals necessary to serve the remaining areas in the service area. It states that the system capacity is adequate to serve an additional 145 customers. It intends to charge customers outside of the condominium development the cost of extending the distribution main to their location. It intends to account for these mains as contributions in aid of construction.

The revenue requirements were shown to be the following:

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

RATE BASE		
Gross Plant		$120,552.00
Less: Customer Contribu-tions		18,500.00
Average Plant in Service		102,052.00
Plus: Working Capital		2,452.00
Average Rate Base		104,504.00
RATE OF RETURN	*Cost Rate*	
Long Term Debt	$84,052.00	10%

Common Stock	18,000.00	10%
	102,052.00	10%
RETURN		
Average Rate Base		$104,504.00
		× 10%
		$ 10,450.00
REVENUE REQUIREMENT		
Operation and Maintenance		$11,771.00
Depreciation Expense		3,698.00
Return		10,450.00
Taxes-Property		3,334.00
Revenue Requirement		29,253.00

Bryant Woods utilized the depreciation rates generally accepted by the commission.

The company proposes a rate structure consisting of a base charge of $16.13 per quarter and a consumption charge of $2.55 per hundred cubic feet to recover the revenue requirement. The rate structure was calculated as follows.

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

Depreciation	$ 3,698
Real Estate Taxes	$ 3,334
Base Charge	$ 7,032

$7,032
109 customers = $64.51 Annually or
109 customers = $16.13 Quarterly

Revenue Requirement	$29,253
Less Base Charge	$ 7,032
	$22,221

$22,221
872,000 cu. ft. = $2.55 per hundred
872,000 cu. ft. = cu. ft. annual
872,000 cu. ft. = usage

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The 872,000 cubic feet of annual usage was calculated by assuming 2,000 cubic feet of consumption per customer per quarter. Bryant Woods Water Company estimated 2,000 cubic feet per customer based on an 18 month survey.

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

Proposed Tariff Rate	
Base Charge	$16.13 per quarter
All Consumption	$ 2.55 per 100 cu. ft.

The company will petition the commission for a change its rate base and rates when it wishes to charge rates to Phase II of the service area.

We will take administrative notice of Bryant Wood's demonstrated financial, technical, managerial ability to serve. Bryant Woods has satisfied requirements of the Water Supply and

Pollution Control Division and the Water Resources Division of the Department of Environmental Services concerning suitability and availability of water.

The condominium owners did not pay for the water system as part of their original investment. The cost of the water system was capitalized because Bryant Woods intended to operate the system as a private utility. (Record at 28-29).

IV. *Commission Analysis*

[1-3] We find that the original 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 at 5, 70 NH PUC 563, 566 (June 27, 1985), we stated our criteria for determining the public good as: 1) the need for service, and 2) the ability of the applicant to provide 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 the applicant.

Re International Generation and Transmission Co., DSF 82-30, Order No. 15,755, 67 NH PUC 478, 484 (July 9, 1982).

The facts show a need for the service which is currently being provided. They demonstrate that Bryant Woods is financially, managerially, technically, and generally able to provide service.

RSA 374:22, III provides that no water company shall obtain commission approval to operate as a public utility without first satisfying any requirements of the Water Supply and Pollution Control Commission and the Water Resources Board concerning the suitability and availability of water. The facts show that Bryant Woods has fulfilled these requirements for the developments that it will immediately serve.

No evidence has been shown that people other than those in the condominium development would like to take service in the service area. However, should any other customers request service within the service area, we will require the petitioner to obtain permission from Water Supply and Pollution Control and the Water Resources Division prior to serving these customers. This requirement is consistent with our policy to promote the regionalization of water supply and, therefore, is in the public interest.

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 378:28.

The commission must also set rates that will allow the utility to earn a just and reasonable rate of return on a just and reasonable rate base. RSA 378:28.

The rate base requested is the cost of property used by the utility in the public service. The requested return is the same that we have allowed to similarly situated water utilities. The rate structure fairly allocates these costs among the customers. We, therefore, approve these rates as the permanent rates to be charged.

Our order will issue accordingly.

ORDER

Based upon consideration of the foregoing report which is herein incorporated; it is hereby

ORDERED, that the petition of Bryant Woods Water Company, Inc. for permission to establish a water utility and for permanent rates is approved; and it is

FURTHER ORDERED, that Bryant Woods Water Company, Inc. will obtain permission from Water Supply and Pollution Control and the Water Resources Division prior to serving customers other than those in the Bryant Woods Condominium Development; and it is

FURTHER ORDERED, that Bryant Woods Water Company, Inc. shall file compliance tariffs bearing an effective date of December 2, 1988, and the notation "Authorized by order no. 19,230, in docket no. DE 87-226, dated December 2 , 1988."

By order of the Public Utilities Commission of New Hampshire this second day of December, 1988.

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NH.PUC*12/02/88*[52099]*73 NH PUC 491*Exeter and Hampton Electric Company

[Go to End of 52099]

73 NH PUC 491

Re Exeter and Hampton Electric Company

Additional petitioner: Public Service Company of New Hampshire

DE 88-159
Order No. 19,252

New Hampshire Public Utilities Commission

December 2, 1988

ORDER nisi authorizing two electric utilities to transfer a customer and revise their service boundaries.

MONOPOLY AND COMPETITION, § 29 — Division of service territories — Territorial agreements — Revision of boundaries — Orderly development — Electric utilities.

[N.H.] Where the boundary line separating the service territories of two electric utilities also divided a new housing subdivision, so that a portion of the housing units fell within the territory of one utility and the remainder of the units fell within the territory of the other utility, the commission, in the interests of orderly development, granted the utilities' petition to revise their service boundaries so that the entire development could be served by a single utility.

By the COMMISSION:

ORDER

WHEREAS, the Exeter & Hampton Electric Company (E&H) and the Public Service Company of New Hampshire (PSNH), electric utilities operating under the jurisdiction of this commission, having filed a joint petition on October 27, 1988 seeking authority under RSA 374:22-a *et seq.,* to change service territories in a limited portion of Hampton, New Hampshire; and

WHEREAS, on December 22, 1987, the companies filed a similar joint petition which was set for hearing on March 15, 1988 in NHPUC docket DE 87-259; and

WHEREAS, in response to a joint motion by the parties to terminate the proceedings due to PSNH's perceived inability to effect the transfer, the commission, by letter dated March 14, 1988, closed the docket; and

WHEREAS, PSNH's ability to effect the transfer of service area interests has now been affirmed; and

WHEREAS, E&H and PSNH are authorized to serve in the Town of Hampton, New Hampshire; and

WHEREAS, E&H has received a request for service for a nine unit subdivision from Daybreak Development Corporation, whereupon, the established and agreed upon territory service line divides the development with seven units within the service area of E&H, and two units within the service area of PSNH; and

WHEREAS, to be consistent with the orderly development of the region, E&H should provide service to the whole development, as described in the original petition of December 22, 1987; and

WHEREAS, both companies have agreed that E&H will acquire from PSNH an existing single-phase line extension serving a single customer on Old Fifield Road which provides access to the proposed nine unit development; and

WHEREAS, the commission finds that the single customer, Mr. Russell Jeppesen, has been advised of and has agreed to such transfer; and

WHEREAS, the commission's investigation finds the requested transfer of customer and service territory revision as described in the subject petition to be in the public good; and

WHEREAS, the public should be offered an opportunity to respond in support of, or in opposition to said petition; it is

ORDERED, that all persons interested in responding to this petition be notified that they may submit their comments or file a written request for a hearing in this matter before the commission no later than December 27, 1988 ; and it is

FURTHER ORDERED, that E&H and PSNH effect said notification by publication of this order once in a newspaper having general circulation in the affected region. Such publication to be no later than December 13, 1988 and documented by affidavit to be filed with this office on or before January 3, 1989; and it is

FURTHER ORDERED, that E&H and PSNH file revised Commission Service Territory Maps within 60 days from the effective date of this order, reflecting the above changes in service areas brought about by this revision in franchise boundaries; and specifying thereon that the maps are effective on the date hereof by authority of the above NHPUC order no.; and it is

FURTHER ORDERED, *NISI* that authority be, and hereby is, granted, pursuant to RSA 374:22-a *et seq.*, to Exeter and Hampton Electric Company and Public Service Company of New Hampshire to transfer the single customer and revise the service boundaries as prescribed in the subject petition in the Town of Hampton, New Hampshire; and it is

FURTHER ORDERED, that such authority shall be effective 30 days from the date of this order, unless a hearing is requested as provided above or the commission otherwise directs prior to the proposed effective date.

By order of the Public Utilities Commission of New Hampshire this second day of December, 1988.

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NH.PUC*12/09/88*[52100]*73 NH PUC 492*Gas Rate Design

[Go to End of 52100]

73 NH PUC 492

Re Gas Rate Design

DE 86-208
Order No. 19,255

98 PUR4th 138

New Hampshire Public Utilities Commission

December 9, 1988

ORDER establishing theoretical framework for calculation of marginal costs of providing natural gas service and requiring submission of marginal cost studies by natural gas utilities.

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1. RATES, § 380 — Natural gas — Marginal cost of service — Rate design.

[N.H.] Natural gas utilities were ordered to submit marginal cost studies in addition to the embedded cost studies required whenever rate relief is requested; the commission found that marginal cost information would aid the commission in deciding pricing policies in step with current competitive market conditions faced by natural gas distribution utilities. p. 501.

2. RATES, § 143 — Cost of service — Rate design methodology — Relevance of revenue requirement determinations.

[N.H.] Cost-of-service studies provide only inferential information for use in designing utility rates along with non-cost factors; nevertheless, the appropriate methodology for rate design should not depend upon the results of revenue requirement determinations. p. 502.

3. RATES, § 143 — Cost of service — Marginal costs — Natural gas rate design — Reconciliation with embedded revenue requirement.

[N.H.] In reconciling rates designed on marginal costs with revenue requirements for natural gas utilities based on embedded cost, the commission found an equiproportional method most favorable due to simplicity in implementation and a lack of current data concerning price elasticities of demand required by the inverse

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elasticity method of reconciliation. p. 502.

4. RATES, § 265 — Supply and production capacity costs — Marginal cost methodology — Natural gas.

[N.H.] Both the peaker method and the system planning approach were found acceptable for use in determining the marginal costs of new gas supply and production capacity where both methods had been applied to electric rate-making and where the commission found that, depending upon circumstances, either method might best approximate the actual or expected development of the supply system over the medium term. p. 503.

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i. RATES, § 143 — Cost of service — Marginal costs — Theoretical framework — Natural gas.

[N.H.] Discussion by the commission of the results of a generic investigation of marginal costing for natural gas distribution utilities resulting in the establishment of a basic theoretical framework for determining marginal commodity, customer, distribution capacity, and supply and production capacity costs as well as a method for reconciling marginal costs based rates with an embedded revenue requirement. p. 494.

APPEARANCES: Jacqueline Fitzpatrick, Esq. for EnergyNorth, Inc.; Elias Farrah, Esq. for Northern Utilities; Larry Eckhaus, Esq. for the Office of the Consumer Advocate; Martin C. Rothfelder, Esq. for the commission staff.

By the COMMISSION:

REPORT

I. Background

In August 1984 the commission, in its final order in DR 83-206, *Re Concord Nat. Gas Corp.* (CNGC), Order No. 17,179 (69 NH PUC 461), stated its intent to open a generic docket for investigation into questions of rate design and the role of marginal cost methodologies for gas distributors. The issue was raised when CNGC prepared and submitted a marginal cost of service study in the above docket. The CNGC methodology was not accepted by the commission but led to extensive discovery and discussion as it was the first of its kind submitted to the NHPUC by a gas distributor. The above order set forth the following issues for investigation:

(1) whether marginal cost of service studies should be required of all gas companies requesting rate relief;

(2) what constitutes the proper marginal cost of gas methodology and the likelihood of its achievement;

(3) the feasibility of a uniform policy of customer charge restraint;

(4) the appropriateness (or lack thereof) of a declining block rate structure; and

(5) the Cost of Gas Adjustment and its possible application to marginal cost recovery.

By Order of Notice dated July 14, 1986 the commission opened Docket DE 86-208 for the purpose of investigating the above issues and directed commission staff (staff); Northern Utilities, Inc., (Northern); Concord Natural Gas Corporation, Manchester Gas Company, Gas Service, Inc., (ENI); Claremont Gas Light Company (Claremont), Keene Gas Corporation (Keene), Petrolane-Southern New

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Hampshire Gas Company (Petrolane); the Office of the Consumer Advocate (OCA); and all other parties intending to participate as full parties to appear before the commission in a Procedural Hearing on September 12, 1986. The commission adjourned the hearing to allow the parties to meet informally and reach agreement on a procedural schedule for the investigation.

The first meetings were held on October 10 and October 24, 1986 and thereafter on a regular basis. The parties addressed issue two (2) first because they believed that progress on the other issues was dependent to some extent on the actual methodology to be employed.

As the investigation proceeded it became apparent that the data requirements, analytic sophistication, and costs associated with marginal cost studies could not reasonably be justified for small distributors with relatively stable customer bases and sales. Claremont and Petrolane petitioned the commission on January 29, 1987 for exemption from any requirement to perform marginal cost studies. A similar petition was filed on February 27, 1987 on behalf of Keene.

In all three cases the companies argued that for distributors experiencing little or no growth the information that could be obtained from marginal cost studies would not appreciably add to that obtained from properly executed embedded cost studies. A second concern was the cost of

performing such studies relative to the number of customers served.

In general, Staff agreed with the distributors' arguments and as a result entered into stipulation agreements releasing them from further participation in the docket. After review and consideration, the commission found in Order Nos. 18,697 (72 NH PUC 213), 18,750 (72 NH PUC 290) and 18,756 (72 NH PUC 306) that the stipulations were in the public interest and directed that Claremont, Petrolane and Keene not be required to file marginal cost of service studies at this time.

II. *Consultative Process*

[i] The first meetings were dedicated to a review of theoretical arguments for marginal cost of service studies and to discussing the results of literature surveys on the application of marginal cost principles to gas distributors. After some considerable discussion on the merits and relevance of the various papers discovered during the course of the literature surveys, the parties agreed that no single study addressed the multitude of issues in the detail required. Consequently, the parties pooled their combined resources to construct a marginal cost framework tailored to the needs of gas distributors in the New Hampshire jurisdiction.

Issue 2 — A Marginal Cost of Gas Framework

The first issue that the gas investigation addressed was whether an economically efficient but practical marginal cost methodology could be developed. To determine what constituted a practical marginal cost methodology, the parties concurred that the preparation of independent position papers on the major topics would facilitate the development of an agreed framework while at the same time focusing attention on the contested issues. This framework would be presented to the commission in the form of joint position papers contained in the Report of the Parties. It was decided that a proper division of the topics in this section would be:

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a) Marginal Commodity Costs
b) Marginal Customer-Related Costs
c) Marginal Distribution Capacity Costs
d) Marginal Supply and Production Capacity Costs

A fifth topic, “Reconciling Marginal Cost Revenues with Embedded Revenues,” was later added to the list.

Marginal Commodity Cost of Gas

The first joint position paper (see Attachment 1 to the Report) recommends that marginal commodity costs be defined as the short-run costs incurred in purchasing and delivering gas to customers. Specifically these costs include the mcf-related payments made to pipeline suppliers plus the variable production costs incurred by distributors in producing and selling supplemental gas. Pipeline demand charges were regarded as variable only in the long run and therefore excluded from consideration in this paper.

The first joint paper also calls for the development of weighted-average marginal commodity costs for the summer and winter seasons. These seasonal costs are to be constructed using typical daily marginal costs and the associated daily send-outs. Thus, the parties were able to reach agreement on all issues related to commodity cost determination.

Marginal Customer-Related Costs

The parties defined the marginal customer-related costs as all costs related to the provision and servicing of a gas supply, including the customer related costs of distribution (*i.e.* the service line), its connection to a gas main, a meter for measuring consumption, and the recurring customer costs of meter reading, billing, and accounts collection. The methodology for determining these costs is detailed in the second joint position paper (see Attachment to the Report). In essence, the methodology utilizes a typical plant configuration for each rate group. To the extent that the different load characteristics of the various rate groups require different plant configurations, customer-related costs will vary from group to group.

The parties agreed to terminate customer-related costs at a point immediately upstream of a customer's service. This agreement has two important consequences. First, the distribution costs of mains extension and reinforcement will be classified to the demand component and allocated among the rate groups on the basis of some measure of demand responsibility. This has considerable potential for affecting the summer/winter relationships in rates, if not overall rate levels.

Secondly, the identification of specific customer-related costs may provide support for different customer charges for all rate groups. Again, there are no outstanding issues relative to the calculation of customer-related costs.

Marginal Demand-Related Costs of Distribution

The third joint position paper (see Attachment 3 to the Report) focuses on the long run cost of increasing distribution capacity to meet a hypothetical increment in system demand. Since the hypothetical demand increment is typically the result of consumption decisions of several customers, the focus of the paper is on the joint distribution facilities used to provide service generally rather than specific system components provided to meet individual customer loads.

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To simplify the exposition, the paper deals only with the impact of the demand increment on the reinforcement and extension of the distribution mains. The effect of the demand increment on pipeline underground storage, and supplemental gas plant capacity was classified as production related and left for subsequent discussion.

The distribution capacity cost methodology is forward looking in nature and based largely on engineering judgment. Specifically, the marginal cost of distribution capacity will be derived by calculating the weighted average of the expected reinforcement costs of supplying additional peak day therms at a select number of locations dispersed through time.

As with the first two joint papers, the parties were able to reach agreement on the general

principles related to demand-related costs.

Marginal Demand-Related Costs of Supply and Production

This section of the cost of service methodology is devoted to the identification of marginal demand-related costs associated with the provision of new gas supplies or production capacity to meet demand growth. Production capacity can be increased by expanding existing LNG or propane facilities or constructing new ones.

The fourth joint position paper (see Attachment 4 to the Report) outlines two methods for determining these costs: the System Planning Approach and the Peaker Method. The parties were unable to reach agreement on which of these two methods should form the basis of the capacity cost calculations. Staff and the OCA support the use of the System Planning Approach whereas ENI and Northern advocate the Peaker Method. The position of each party can be found in Appendices 3 through 5 of Attachment 4.

Revenue Reconciliation

The development by the parties of a marginal cost methodology was undertaken specifically to determine whether marginal cost theory could be applied to gas distributors. However, rates based on marginal costs can result in revenue surpluses or shortages, relative to the traditional embedded revenue requirement. Consequently, some means of reconciling the marginal cost based revenues to the revenue requirement must be found.

Several different reconciliation methods have been proposed in utility rate cases in this and other jurisdictions. A number of the more common methods were examined by the parties to weigh their advantages and disadvantages. Three such methods are discussed in staff position paper number five (see Attachment 5 to the Report) and a fourth in Northern Utilities position paper number five (see Attachment 6 to the Report).

After full and frank discussions on this issue agreement floundered on the question of how to determine class revenue responsibility. Northern Utilities argued that an embedded cost of service study should be employed. Staff, on the other hand, contended that the appropriate method is to adjust the marginal cost based class revenues by a uniform percentage such that the resulting total class revenues match the company revenue requirement. ENI and the OCA argued that the commission should not take a definitive position on reconciliation prior to the discussion of rate design issues. As a result of the failure to agree it was decided that each party should place before the commission

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summary arguments supporting its preferred solution.

Issue 1 — Marginal Cost of Service Studies

Having completed its work on methodological issues the investigation turned to the question whether, as a prerequisite, gas distributors should be required to file marginal cost of service studies when requesting rate relief.

ENI and the OCA are in agreement that the commission will benefit from the filing of marginal and embedded cost of service studies. Both, however, are concerned about the

additional cost of performing two studies and the consequent impacts on ratepayer's gas bills, a concern shared by Northern, compared to the benefits to be derived from such studies. Further, the OCA contends that embedded class cost of service studies provide useful information concerning class responsibility for embedded versus incremental costs. The OCA also pointed to its limited resources and the time and effort that would be required to review and analyze such studies.

While accepting that more information is generally better than less, staff argued that two studies are not necessarily better than one. Comparing the results of a marginal cost study with those of an embedded study is, in staff's opinion, like comparing apples and oranges and would hinder rather than help the commission's decision making process. Staff went further and argued that choosing the “best method” is not only efficient, it is the only practical approach given the limited resources available to regulatory agencies.

Northern is not opposed to the idea of filing marginal cost studies in rate cases if the commission so orders.

Issue 3 — Customer Charge Restraint

Discussions on the feasibility and merits of a uniform policy of customer charge restraint took place against a background of unanimous agreement on the composition of the marginal customer cost methodology. As previously noted, this methodology is intended to determine for each customer group a typical service cost in each franchise area. As such, it recognizes the existence of variations in labor and materials costs, differences in engineering practices, and geological disparities between companies. The parties concluded, therefore, that it is unlikely that a set of customer costs for one franchise will be representative of the costs of some other.

Furthermore, based on the physical distribution system components which are covered by the methodology, the parties believe that the resulting customer costs may differ substantially from the charges currently in effect. However, rather than draw any conclusion regarding customer charge restraint, the parties agreed to postpone making a final recommendation on this matter until rate design issues are addressed.

Issue 4 — Declining Block Rate Structures

Discussions on the appropriateness of declining block rate structures were deferred pending decisions from the commission on the contested issues described herein.

Issue 5 — Cost of Gas Adjustment

The initial discussions focused on the role of a cost of gas adjustment clause in rates designed to reflect marginal cost. After some consideration it was accepted by all parties that the clause served the

same function for embedded cost rates as it did for marginal cost rates; namely, to change the distributor's revenue requirement in response to a change in gas costs.

The discussion then turned to the question of how this revenue change should be allocated among classes. Although the parties have discussed how this should be done, it was eventually

decided that pending resolution of the revenue reconciliation question, recommendations on this issue should be deferred.

III. Report to the Commission

The findings and conclusions of the Gas Rate Design Investigation are contained in the Report of the Parties filed with the commission on June 30, 1988. In summary, the parties found that a cost of service methodology based on widely accepted marginal cost principles can be constructed for use by gas distribution companies. With respect to the methodology itself, the parties could not agree on all issues, although the areas of disagreement are few. The parties contend that resolution of these outstanding issues is important not only for reasons of equity between the classes but also to remove a road block that is preventing the investigation from addressing rate design questions. The road block is a consequence of the parties, inability to resolve the revenue reconciliation problem.

Differences over revenue reconciliation did not prevent the parties from examining, as directed by the commission, the prospects for a uniform policy of customer charge restraint. The customer cost methodology agreed by the parties recognizes that different distributors incur different customer costs, and that there are strong indications that the agreed methodology may result in costs that differ substantially from the customer charges currently in effect. Although this conclusion appears to rule out customer change restraint, the parties decided against adopting final positions pending discussion of rate design issues. For similar reasons the parties declined to take firm positions at this time on the cost of gas adjustment.

On the matter of whether marginal cost studies should be required in rate cases, the parties were divided between, on the one hand, setting rates using reconciled marginal costs only and, on the other hand, using information derived from embedded and marginal cost of service studies. No party directly opposed the use of marginal costs when requesting rate relief but concerns were raised regarding the costs and benefits of such studies.

Finally, should the commission decide that marginal cost of service techniques are beneficial and orders such studies to be submitted in rate cases, the parties request that a hearing be arranged to examine in greater detail the following contested questions:

a) Should gas distributors be required to file only a marginal cost of service study or a marginal cost of service study and an embedded cost of service study?

b) Should class revenues be derived:

1) from an embedded cost of service study; or

2) from an equiproportional adjustment to each classes' marginal costs; or

3) by a method left undetermined until cost of service results are available?

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c) Shou1d the cost of new gas supply or production capacity be determined by use of the system planning approach or the peaker method?

IV. *Positions of Parties*

In an order of notice issued June 26, 1988 the commission ordered a hearing to be held on July 15, 1988 to address the above mentioned contested issues. With the exception of the Office of the Consumer Advocate, all parties filed direct testimony that expanded on the positions outlined in the Report of the Parties.

EnergyNorth, Inc.

On the threshold question of whether marginal cost of service studies should be required of gas companies, the company argued that the additional information provided from such studies would enhance the commission's decision making process. However, the company was concerned about the extra cost of performing two studies and the consequent impact on ratepayers' gas bills. In addition, the company questioned whether it is possible to construct rates that reflect marginal costs and at the same time bring in sufficient revenues to meet the company's revenue needs and satisfy all of the normal objectives of ratemaking.

With regard to the question of reconciling marginal and embedded costs, the company argued that the methodology should not be predetermined but rather left until marginal and embedded cost of service results are available.

Finally, the company advanced two arguments for supporting the Peaker Method over the System Planning Approach as the basis for determining marginal demand-related costs. First, it argued that the System Planning Approach is characterized by the need for detailed and complex estimates of many variables. As such, the results must be of questionable validity. Second, despite the fact that the company anticipates acquiring additional pipeline supplies, the fact that supplemental facilities (LNG and LP plant) will continue to meet peak day demands is sufficient justification for using the Peaker Method.

Office of the Consumer Advocate

The OCA supported ENI and argued that the commission would benefit from the extra information provided by two studies. However, the OCA cautioned that more time and effort would be required to review and analyze two studies.

On the issue of revenue reconciliation the OCA argued that the commission should not take a definitive position prior to the discussion of rate design issues.

The OCA's position on the determination of marginal demand-related costs is set out in Appendix 5 to Attachment 4 of the Report from the Parties. In that appendix the OCA argues that because both gas companies are actually planning to meet load growth by adding pipeline capacity rather than peakers, actual marginal costs are likely to be far different than those determined using a hypothetical peaker. If the companies intend employing the Peaker Method, the companies should be required to show that marginal cost using a peaker will not be significantly different from those derived using the System Planning Approach.

Northern Utilities

Northern is not opposed to the idea of filing marginal cost studies in rate cases

but it is opposed to exclusive reliance on such studies. Its opposition is based on the belief

that embedded cost studies provide information that is useful in determining class revenues and in designing rates. For example, Mr. Davis for Northern argued in his prefiled direct testimony that because the company's rates in aggregate will always reflect total embedded cost, studies which allocate those costs among customer classes inevitably provide information that is valuable to the rate design process.

Northern's initial position on the revenue reconciliation question is set out in Attachment 6 to the Report from the Parties. In that attachment Northern recommends that class revenue responsibility be determined initially by employing a fully allocated embedded cost of service study. In his prefiled testimony Mr. Davis developed the company's position further and argued that revenue responsibility can only be provided by an embedded cost study. Mr. Davis went on to say that the initial revenue determinations can be adjusted later to account for such ratemaking objectives as rate and revenue stability.

With regard to the calculation of marginal supply/production capacity cost Northern advocates the use of the Peaker Method. The company believes that the Peaker Method: 1) provides an accurate estimate of the marginal cost of supply/production capacity; 2) is easy to calculate and review; and 3) is not subject to volatility, variation or controversy.

The company acknowledges that a distributor will not always select a peaker type plant to solve a potential capacity deficiency. A supply type with a higher capacity cost may be selected if the supply can be utilized enough to take advantage of lower commodity costs, thus reducing total system gas costs. However, the company argues that only part of the energy savings associated with the alternative supply should be considered in determining the net capacity cost. Any savings that would take the net capacity cost below the cost of peaker should be regarded as commodity related fixed costs. In support of this view Northern alleges that this concept was accepted by the commission in the Comprehensive Avoided Cost Rate Proceeding, DR 86-41.

On the question of the fitness of the System Planning Approach, Northern argues that: 1) it is difficult to calculate and review; 2) it is subject to extreme volatility, variation and controversy; and 3) it does not accurately measure short run or long run marginal capacity costs.

On September 2, 1988 Northern's attorneys filed an Initial Brief summarizing the company's position on each of the contested issues in the proceeding.

Staff

While accepting that more information is generally better than less, staff does not accept that two studies are better than one. Comparing the results of a marginal cost study with those of an embedded study is, in staff's opinion, like comparing apples and oranges and could hinder rather than help the decision making process. In consequence, staff recommends that only one cost study should be required and that that study should be based on marginal principles.

With regard to the issue of revenue reconciliation, staff opposes Northern's suggestion that an embedded study should be used to determine class revenue responsibilities. According to staff, Northern's approach is not supported by economic

theory and would serve to obscure the price signals that are the purpose of performing a

marginal cost study in the first place.

Staff's preferred method is to spread the difference between marginal cost and embedded cost revenues equiproportionately among customer classes, the methodology currently employed in the Public Service Company of New Hampshire cost study. Since this approach does not require the determination of demand elasticities it is considered administratively simpler to implement than the inverse elasticity alternative. In addition, the equiproportional approach, unlike Northern's method, is geared to maintaining the marginal cost price signals and therefore maximizing economic efficiency. Staff also objects to the support by Northern and EnergyNorth for the Peaker Method to determine marginal capacity costs of production. This objection is based largely on the belief that the costing methodology should not reflect some simplified view of a gas supply system but rather should attempt to replicate as closely as possible the actual supply intentions of the distributor. Since both New Hampshire distributors are currently planning to meet load growth by adding new pipeline capacity, staff contends that the marginal cost of capacity should equal the net cost of new pipeline supplies. While the analysis required for the system planning methodology is complex, it is the same analysis that the companies should be performing if they are planning to add pipeline capacity. Further, if a utility wishes to use some method other than one that replicates its actual intentions (such as the peaker methodology) then it must demonstrate that this does not unduly discriminate against particular customer groups.

V. *Commission Analysis*

[1] By the time the parties to the Gas Rate Design Investigation presented their findings and recommendations in June 1988, almost two years had passed since this docket was opened and approximately four years since the issues of rate design and the role of marginal costing in gas distribution were first raised. It is our belief that the passage of time has not diminished the need to continually develop ratemaking practices and review alternative procedures. In fact, we believe that the regulatory developments at the federal and state levels in recent years have changed the whole nature of the gas industry from what was once regarded as a relatively staid and uncomplicated business to an industry that is still adjusting to new purchasing opportunities. The degree to which gas distributors in this state are able to take advantage of these new opportunities will depend on many factors including the pricing policies pursued. Hence we find the Report from the Parties to be a timely and important contribution to the debate on gas rate design.

Though the report does not provide final answers to all of the questions posed in our July 14, 1986 order of notice we note that, with the exception of the block rate issue, most, if not all, of the preparatory work has been completed and that the parties are close to agreement. Nevertheless, the parties request that the commission resolve disagreements that arose over the appropriate methodological treatment of three issues. Before addressing these essentially technical questions, the report asks that we first examine the central policy issue in this proceeding; namely, whether gas distributors should be required to file marginal cost studies in rate cases. Based on the record in this proceeding we believe

that the arguments strongly favor the use of such studies in cases involving rate design matters.

Our decision was influenced in part by the fact that no party directly opposed the requirement and that only Northern was unable to find some merit in the idea. Moreover, we believe that the major practical obstacle to the use of marginal cost ratemaking was substantially removed with the successful construction of a workable cost of service methodology.

Much of the concern regarding marginal cost of service studies was directed at the proposal by staff that such studies should be elevated to special status. While we agree with staff's assertion that embedded and marginal cost of service studies may provide alternative but essentially unrelated solutions to the same problem and that little could be gained by comparing the two, we do not agree that the public good would be served at this time by preventing consideration of traditional ratemaking methods. It should be noted that the commission's July 17, 1986 order of notice did not direct the parties to address the relative merits of marginal and embedded cost of service methodologies. Rather, the parties were simply asked to advise on the merits of using marginal cost of service techniques. Therefore, we reject staff's position and direct EnergyNorth and Northern Utilities to file both marginal and embedded cost of service studies whenever rate relief is requested. This is consistent with our decision in Public Service Company of New Hampshire, Report and Order No. 18,726. To the extent that a company does not have a methodologically acceptable embedded cost study, we would entertain a motion to waive the requirement of an embedded cost study at the time of the filing.

[2] Cost of service studies are useful to utilities and commissions because they provide inferential information for use in rate design. Since all parties to this proceeding agree that rates should allow a company to recover its embedded revenues it must follow that for marginal studies to be useful we must first address the reconciliation issue. We see no merit in the idea propounded by ENI and the OCA that the revenue reconciliation method and hence class revenues be left undetermined until cost of service results are available. Such a proposal implies an intention to modify methodology depending on the results of the study. The commission may indeed modify the translation of the cost studies into rates, but that modification will be based on our other non-cost ratemaking objective of continuity and stability of rates.

[3] We also reject Northern's argument that class revenues should be determined by a fully allocated embedded cost of service study. To sanction such a procedure would be inconsistent with our desire to have on record the results of two stand alone cost studies. Furthermore, we disagree fundamentally with the notion that because a company's revenue requirements are derived from its embedded costs, then class embedded responsibilities somehow attain an elevated status. Embedded cost responsibilities will be subject to the same tests for reasonableness and efficiency that will be applied to marginal cost responsibilities. Of the remaining reconciliation methods, we believe that equiproportional adjustments have a number of advantages, including the fact that they are administratively simple to implement and that they maintain the marginal cost class signals. The inverse elasticity method, on the other hand, requires copious amounts of data and extensive analysis to support the customer class elasticities.

We are therefore inclined towards the equiproportional approach but would not preclude consideration of other methodologies. Again, this is consistent with our decision in PSNH, Report and Order 18,726.

Before leaving this issue it might be helpful to clarify that our decision relates only to the initial determination of class revenues. This opinion does not address the other important factors which must be considered when constructing final rates. This we will do when the parties present their recommendations on rate design.

[4] The final unresolved issue concerns the method to be used to determine the marginal cost of new gas supply/production capacity. We agree with the EnergyNorth/Northern statement that the Peaker Method is commonly used for estimating electric utility marginal generation costs and can easily be adapted to a gas utility's circumstances. We also agree with staff and the Consumer Advocate that the mechanics of the system planning approach can be applied equally well to the gas sector as it is to the electric sector. Although both methods require detailed assumptions to be made of time dependent variables the greater number of unknowns in the system planning approach makes that method inherently more uncertain. The greater degree of certainty with the peaker method, however, is of no consolation if the final result bears little resemblance to reality, *i.e.* the actual or projected net cost of capacity additions based on the utility's least cost construction plans. Such an outcome is not unlikely given that New England gas utilities continue to be active in securing new pipeline supplies.

Therefore, we reject Northern's argument that capacity costs of any type of supply can be separated into the pure capacity costs of a peaker and commodity related fixed costs. This view we believe is based on a misunderstanding of the literature on marginal capacity costs. Furthermore, there are many instances in the electric sector where this commission has used the market price of capacity as a proxy for the marginal cost of capacity. Until very recently this price was much less than the first year cost of a peaker. We also note that Northern has apparently misunderstood the methodology of DR 86-41. In that case, a peaker was the next unit expected to be placed in service and was therefore the appropriate measure for costing system expansion.

Given that neither company has proven experience in the preparation of marginal cost of service studies, this commission has no desire to unduly complicate the process. Nevertheless, we are concerned that the results from such studies reasonably reflect the actual or expected development of the supply system over the medium term. Consequently, we will allow companies to use either the system planning approach or the peaker method. However, companies intending to use the peaker method will be required to demonstrate that the resulting capacity costs reasonably approximate to actual or expected costs.

Our order will issue accordingly.

ORDER

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

ORDERED, that the agreement between the staff, the Consumer Advocate, Northern Utilities and EnergyNorth on the framework for a marginal cost of gas methodology is accepted; and it is

FURTHER ORDERED, that Northern Utilities and EnergyNorth immediately begin work on developing a marginal cost of service study using the above mentioned agreement and the commission's findings; and it is

FURTHER ORDERED, that the parties reassemble at these offices on January 6, 1989, and on a regular basis thereafter, to discuss cost allocation and rate design issues; and it is

FURTHER ORDERED, that at the conclusion of the consultative process the parties present their findings to the commission, including results from a completed marginal cost study; and it is

FURTHER ORDERED, that EnergyNorth and Northern Utilities file a marginal cost of service study whenever rate relief is requested.

By order of the Public Utilities Commission of New Hampshire this ninth day of December, 1988.

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NH.PUC*12/09/88*[52101]*73 NH PUC 504*Lakeport Hydroelectric Corporation, Inc.

[Go to End of 52101]

73 NH PUC 504

Re Lakeport Hydroelectric Corporation, Inc.

DR 85-156
Order No. 19,257

Re Alden T. Greenwood, d/b/a
Alden Engineering Company

DR 85-230
Order No. 19,257

New Hampshire Public Utilities Commission

December 9, 1988

ORDER dismissing motions for rehearing of a prior order rescinding commission approval of 30-year rates for certain small power production projects. For prior order see NH PUC 228.

COGENERATION, § 24 — Rates — Procedure — Recision of 30-year rate order — Denial of rehearing — Small power production projects.

[N.H.] The commission dismissed motions for rehearing of a prior order rescinding

commission approval of 30-year rates for certain small power production projects; dismissal of the motions was deemed appropriate because one of the movants had filed a motion for voluntary dismissal and the other had failed to present any fact or argument warranting rehearing.

APPEARANCES: Alden Engineering Company by Alden T. Greenwood; Public Service Company of New Hampshire by Thomas B. Getz, Esq.; Staff of the Public Utilities Commission by Dr. Sarah P. Voll and Dianne L. Brown.

By the COMMISSION:

REPORT

On May 19, 1988, by order no. 19,095 (73 NH PUC 228) the commission rescinded for reasons stated therein, approval of the unlevelized 10 years 2006-2015 of the 30 year rate orders that had been approved for Waterloom Falls, Otis Falls and Chamberlain Falls by order no. 17,814 and for Lakeport Hydroelectric Corporation (Lakeport) by order no. 17,895, and reconfirmed the 20 years 1986-2005 in both orders. On May 31, 1988, Alden T. Greenwood d/b/a Alden Engineering Company (Greenwood) filed a motion for reconsideration and on June 8, 1988 Lakeport filed a similar motion. The commission granted the motions by order nos. 19,118 and 19,119. The commission amended the procedural schedule by order nos. 19,150 and 19,214 and set a hearing on the merits for November 28,

1988.

On November 23, 1988, Lakeport filed a motion for voluntary dismissal of its June 8, 1988 motion for reconsideration.

At the hearing, Greenwood conceded that the commission had acted within its authority in issuing the rescission order, and did not contest the merits of the order as set forth in staff testimony and the order itself. Greenwood also raised some questions concerning his options regarding his unlevelized 20 year rates.

We find, therefore, that Lakeport has withdrawn its motion for reconsideration in this docket, that Greenwood has presented no fact or argument to cause us to disturb our findings, and that order no. 19,095 is lawful, reasonable and in the public good.

Our order will issue accordingly.

ORDER

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

ORDERED, that the Motion for Rehearing filed by Alden T. Greenwood d/b/a Alden Engineering of order no. 19,095 be, and hereby is, denied, and that the Motion for Voluntary Dismissal filed by Lakeport Hydroelectric Corporation be, and hereby is, approved.

By order of the Public Utilities Commission of New Hampshire this ninth day of December,

1988.

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[Go to End of 52102]

73 NH PUC 505

Re New England Telephone and Telegraph Company, Inc.

DE 88-178
Order No. 19,259

New Hampshire Public Utilities Commission

December 12, 1988

ORDER nisi authorizing a local exchange telephone carrier to expand the boundaries of an exchange area.

SERVICE, § 445 — Telephone — Exchange areas and boundaries — Expansion of service territory — Local exchange carrier.

[N.H.] A local exchange telephone carrier was conditionally authorized to expand the boundaries of one of its exchange areas to extend service to a previously unfranchised area; it was found that the carrier was the only abutting telephone utility available to provide service to a new development in the previously unfranchised area; final authorization was conditioned on the public having an opportunity to respond in support or opposition to the service extension.

By the COMMISSION:

ORDER

WHEREAS, on November 21, 1988, the New England Telephone & Telegraph Company, Inc. (NET or New England Telephone) filed with this commission a petition according to RSA 374:22 to expand the boundaries of its North Conway Exchange to include the unincorporated Hale's Location, Carroll County, New Hampshire; and

WHEREAS, Hale's Location currently is an unfranchised area; and

WHEREAS, Hale's Location is bounded on all side by New England Telephone exchanges; viz the North Conway Exchange on three sides, the Conway Exchange on the fourth; and

WHEREAS, a residential development of 139 units is proposed for the affected area; and

WHEREAS, NET is the only abutting telephone utility available to provide service to this development and it stands ready and willing to supply such service; and

WHEREAS, the commission's investigation finds the proposal to serve Hale's Location from the North Conway Exchange is in the public good; and

WHEREAS, the commission also feels that the public should be given an opportunity to respond in support of or in opposition to this petition; it is

ORDERED, that all persons be notified that they may submit comments in writing or file a written request for a hearing on this matter before the New Hampshire Public Utilities Commission no later than January 4, 1989; and it is

FURTHER ORDERED, that New England Telephone effect said notice by one-time publication of this order in *The Union Leader* no later than December 21, 1988 and documented by affidavit to be filed with commission no later than January 11, 1989; and it is

FURTHER ORDERED, that NET file its 5th Revised Sheet 45, Section 6, Tariff No. 75 to reflect the changes authorized by this order, such sheet to bear the effective date specified herein; and it is

FURTHER ORDERED *NISI* that New England Telephone be, and hereby is, authorized the franchise to provide telephone service to customers in the unincorporated Hale's Location, New Hampshire; 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 twelfth day of December, 1988.

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NH.PUC*12/12/88*[52103]*73 NH PUC 506*New England Telephone and Telegraph Company, Inc.

[Go to End of 52103]

73 NH PUC 506

Re New England Telephone and Telegraph Company, Inc.

Additional party: State of New Hampshire

DR 88-171
Order No. 19,260

New Hampshire Public Utilities Commission

December 12, 1988

ORDER nisi authorizing a local exchange telephone carrier to provide digital Centrex service to the State of New Hampshire at special contract rates.

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1. RATES, § 211 — Special contract rates — Commission power to approve — Statutory standard.

[N.H.] The commission has authority under RSA 378:18 to approve special contracts for service at rates other than those fixed in the public utility's schedules, provided that special circumstances exist which render departure from the general schedules to be just and consistent with the public interest. p. 507.

2. RATES, § 534 — Telephone — Special contract rate — Digital Centrex service — Local exchange carrier.

[N.H.] A local exchange telephone carrier

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was conditionally authorized to provide digital Centrex service to the state of New Hampshire at a special contract rate where the contract (1) had received the approval of the governor and council, (2) covered the cost of service, (3) avoided the loss of the State of New Hampshire as a Centrex subscriber, thereby preventing a loss of revenue and stranded investment, and (4) preserved that portion of the end user common line charge which would have been forfeited had the state chosen to use a customer-owned private branch exchange rather than Centrex service. p. 507.

By the COMMISSION:

ORDER

"[1, 2]" WHEREAS, on November 17, 1988 New England Telephone and Telegraph Co. (NET) filed a petition seeking approval of Special Contract No. 88-1 by which it proposed to supply digital Centrex service to the State of New Hampshire; and

WHEREAS, the commission has authority under N.H. R.S.A. § 378:18 (1984) to approve special contracts for service at rates other than those fixed in a public utility's schedules if special circumstances exist which render departure from the general schedules just and consistent with the public interest; and

WHEREAS, the proposed contract addresses the commission's requirements with respect to special contracts as enumerated in *Re New England Teleph. & Teleg. Co.*, DR 85-425, Order No. 18,213, (April 9, 1986) (71 NH PUC 234) to wit, the contract price covers the cost of providing service, it avoids the loss of the State of New Hampshire as a Centrex subscriber which would mean loss of revenue and accompanying stranded investment to New England Telephone, it preserves the portion of the end user common line charge which would be forfeited should the State choose to substitute a customer-owned private branch exchange (PBX), and

WHEREAS, in its docket DR 86-244, this commission authorized Special Contract No. 86-1 which provided the State of New Hampshire analog Centrex service, while the instant docket upgrades the Centrex to digital, state-of-the-art service with its many features and advantages; and

WHEREAS, the commission recognizes that Contract 88-1 has received Governor and Council approval on September 7, 1988; and

WHEREAS, the commission accepts such approval as in the public interest; and

WHEREAS, the commission also finds that NET's ratepayers should be afforded an opportunity to file comments and/or to request an opportunity to be heard on the NET/State of New Hampshire contract; it is

ORDERED *NISI*, that New England Telephone's Special Contract No. 88-1 be, and hereby is approved for effect on January 11, 1989; and it is

FURTHER ORDERED, that NET shall notify all persons desiring to be in this matter by causing an attested copy of this order to be published once in a newspaper having general circulation in that portion of the State in which New England Telephone provides service, such publication to be made no later that ten (10) days after the date of this order and designated in an affidavit to be made on a copy of this order and filed with the commission within seven (7) days after said publication; and it is

FURTHER ORDERED, that any interested party may file written comments

and/or request an opportunity to be heard in this matter within twenty (20) days after the date of this order; and it is

FURTHER ORDERED, that this Order *NISI* will be effective thirty (30) days from the date of this order unless the commission provides otherwise in a Supplemental Order issued prior to the effective date.

By order of the Public Utilities Commission of New Hampshire this twelfth day of December, 1988.

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NH.PUC*12/14/88*[52105]*73 NH PUC 509*Southern New Hampshire Water Company, Inc.

[Go to End of 52105]

73 NH PUC 509

Re Southern New Hampshire Water Company, Inc.

DE 88-163
Order No. 19,262

New Hampshire Public Utilities Commission

December 14, 1988

ORDER establishing a procedural schedule for hearings on a petition for an exemption from a local zoning ordinance.

ZONING — Exemption from local ordinance — Water utility construction — Procedural schedule.

[N.H.] A petition by a water utility for an exemption from a local zoning ordinance in order to construct a water tower was denied as premature where plans for the construction had not been finalized, financing had not yet been arranged, and the utility had not received approval for the construction from its parent company; nevertheless, in view of the fact that it might be possible for the utility to finalize its plans during the course of regularly scheduled proceedings, the commission fixed a procedural schedule for hearings on the matter.

APPEARANCES: Larry Eckhaus, Esq. on behalf of Southern New Hampshire Water Company, Inc., and Eugene F. Sullivan, III, Esq. on behalf of the staff of the Public Utilities Commission.

By the COMMISSION:

REPORT

On November 1, 1988, Southern New Hampshire Water Company, Inc. (Company) filed a petition pursuant to RSA 674:30 seeking exemption from the Town of Hudson Zoning Ordinance in order to construct a water tower which violated the Town's height restrictions. By an order of notice dated November 9, 1988, a prehearing conference was scheduled for December 5, 1988. At said prehearing conference the parties could not agree on a procedural schedule to govern the duration of the proceeding.

The company sought an immediate hearing so that blasting, necessary for the construction of the tower, could be expedited in order to avoid damage to homes that are currently being constructed in the area. The staff objected to an expedited hearing and proposed an

extended schedule in light of the fact that the Company had not yet finalized its plans as to the type of tower to be constructed; had not yet established a plan for financing the construction; and had not yet received the permission of its parent company to go forward with the project.

The company has failed to meet its burden of proof to establish that the granting of an exemption from the Town of Hudson's zoning ordinance is in the public interest. The Company was directed by the planning board to seek an exemption from the provisions of the zoning ordinance in August 1988. A petition was not filed with the commission until November 1988. The petition and the testimony fail to demonstrate that an exemption should be granted at this time. The request is premature in that the plans have not been finalized as to the type of tower to

be constructed. The financing has not been arranged and the company has not received approval from its parent company.

It may be feasible for the company to meet its burden during the course of a regularly scheduled proceeding, therefore the Commission fixes the following procedural schedule.

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

December 19, 1988 Company testimony is due.
January 3, 1989   Staff data requests are due.
January 10, 1989  Responses to staff data
                  requests are due.
January 24, 1989  Staff testimony is due.
February 3, 1989  Company data requests are
                  due.
February 10, 1989 Responses to company data
                  requests are due.
February 16, 1989 Hearing on the merits.
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The procedural schedule appears to be in the public interest.

Our order will issue accordingly.

ORDER

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

ORDERED, that the procedural schedule set forth in the foregoing report is approved.

By order of the Public Utilities Commission of New Hampshire this fourteenth day of December, 1988.

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NH.PUC*12/16/88*[52106]*73 NH PUC 510*New Hampshire Electric Cooperative, Inc.

[Go to End of 52106]

73 NH PUC 510

Re New Hampshire Electric Cooperative, Inc.

Additional party: Mount Attitash Lift Corporation

DR 88-193
Order No. 19,263

New Hampshire Public Utilities Commission

December 16, 1988

ORDER nisi authorizing an electric cooperative to provide service at a special contract rate to a customer with interruptible loads.

RATES, § 322 — Electric rate design — Special contract rate — Interruptible loads.

[N.H.] An electric cooperative was conditionally authorized to provide service at a special contract rate to a customer with interruptible loads where (1) the contract was intended to provide for the continuation of the voluntary interruptible load program approved by prior order, and (2) it was found that special circumstances existed that rendered the contract just and consistent with the public interest; final authorization was conditioned on the public having an opportunity to respond in support or opposition to the contract.

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By the COMMISSION:

ORDER

WHEREAS, New Hampshire Electric Cooperative, Inc. a utility selling electricity under the jurisdiction of this commission has filed with the commission a copy of its Special Contract No. 77 with Mount Attitash Lift Corporation, effective December 1, 1988 for electrical service at rates other than those fixed by its schedule of general application; and

WHEREAS, this Special Contract is intended to provide for the continuation of the voluntary interruptible load program approved by the commission on December 1, 1981 under Puc Order No. 15,455; and

WHEREAS, this Special Contract also contains an additional special incentive program for the months of December 1988 through February 1989 conforming to an arrangement for interruptible loads between the Cooperative and its wholesale supplier, Public Service Company of New Hampshire (PSNH); and

WHEREAS, upon investigation and consideration, this commission finds that special circumstances exists relative thereto, which render the terms and conditions thereof just and consistent with the public interest; it is hereby

ORDERED NISI, that the New Hampshire Electric Cooperative be, and hereby is, authorized to implement the above described Special Contract which shall be filed and made public as part of the published schedules of this utility; and it is

FURTHER ORDERED, that the contract remain in effect for one year only; and it is

FURTHER ORDERED, that the contract be renegotiated such that the determination of the customers interrupted load be based on a measure of uninterrupted load during non-peak alert periods; and it is

FURTHER ORDERED, that the New Hampshire Electric Cooperative publish 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 26, 1988 and be documented by affidavit to be made on a copy of this order and filed with the commission on or before January 13, 1989; and it is

FURTHER ORDERED, that any interested party who objects to or wishes to amend this order should file such objection or proposed amendment by January 13, 1989. If a proposed

amendment or objection is filed, the commission will promptly schedule a hearing thereon with the rates continued in this contract being subject to refund should the commission so order; and it is

FURTHER ORDERED, that this order nisi will be effective on December 1, 1988 unless the commission provides otherwise in a supplemental order issued prior to January 20, 1989.

By order of the Public Utilities Commission of New Hampshire this sixteenth day of December, 1988.

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NH.PUC*12/16/88*[52107]*73 NH PUC 512*New Hampshire Electric Cooperative, Inc.

[Go to End of 52107]

73 NH PUC 512

Re New Hampshire Electric Cooperative, Inc.

Additional party: Black Mountain Development Corporation

DR 88-194
Order No. 19,264

New Hampshire Public Utilities Commission

December 16, 1988

ORDER nisi authorizing an electric cooperative to provide service at a special contract rate to a customer with interruptible loads.

RATES, § 322 — Electric rate design — Special contract rate — Interruptible loads.

[N.H.] An electric cooperative was conditionally authorized to provide service at a special contract rate to a customer with interruptible loads where (1) the contract was intended to provide for the continuation of the voluntary interruptible load program approved by prior order, and (2) it was found that special circumstances existed that rendered the contract just and consistent with the public interest; final authorization was conditioned on the public having an opportunity to respond in support or opposition to the contract.

By the COMMISSION:

ORDER

WHEREAS, New Hampshire Electric Cooperative, Inc. a utility selling electricity under the jurisdiction of this commission has filed with the commission a copy of its Special Contract No. 78 with Black Mountain Development Corporation, effective December 1, 1988 for electrical

service at rates other than those fixed by its schedule of general application; and

WHEREAS, this Special Contract is intended to provide for the continuation of the voluntary interruptible load program approved by the commission on December 18, 1984 under Puc Order No. 17,426 (70 NH PUC 39); and

WHEREAS, this Special Contract also contains an additional special incentive program for the months of December 1988 through February 1989 conforming to an arrangement for interruptible loads between the Cooperative and its wholesale supplier, Public Service Company of New Hampshire (PSNH); and

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

ORDERED NISI, that the New Hampshire Electric Cooperative be, and hereby is, authorized to implement the above described Special Contract which shall be filed and made public as part of the published schedules of this utility; and it is

FURTHER ORDERED, that the contract remain in effect for one year only; and it is

FURTHER ORDERED, that the contract be renegotiated such that the determination of the customers interrupted load be based on a measure of uninterrupted load during non-peak alert periods; and it is

FURTHER ORDERED, that the New Hampshire Electric Cooperative publish 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 26, 1988 and be documented by affidavit to be made on a copy of this order and

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filed with the commission on or before January 13, 1989; and it is

FURTHER ORDERED, that any interested party who objects to or wishes to amend this order should file such objection or proposed amendment by January 13, 1989. If a proposed amendment or objection is filed, the commission will promptly schedule a hearing thereon with the rates continued in this contract being subject to refund should the commission so order; and it is

FURTHER ORDERED, that this order nisi will be effective on December 1, 1988 unless the commission provides otherwise in a supplemental order issued prior to January 20, 1989.

By order of the Public Utilities Commission of New Hampshire this sixteenth day of December, 1988.

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NH.PUC*12/16/88*[52108]*73 NH PUC 513*New Hampshire Electric Cooperative, Inc.

[Go to End of 52108]

73 NH PUC 513

Re New Hampshire Electric Cooperative, Inc.

Additional party: Mount Cranmore, Inc.

DR 88-195
Order No. 19,265

New Hampshire Public Utilities Commission

December 16, 1988

ORDER nisi authorizing an electric cooperative to provide service at a special contract rate to a customer with interruptible loads.

RATES, § 322 — Electric rate design — Special contract rate — Interruptible loads.

[N.H.] An electric cooperative was conditionally authorized to provide service at a special contract rate to a customer with interruptible loads where (1) the contract was intended to provide for the continuation of the voluntary interruptible load program approved by prior order, and (2) it was found that special circumstances existed that rendered the contract just and consistent with the public interest; final authorization was conditioned on the public having an opportunity to respond in support or opposition to the contract.

By the COMMISSION:

ORDER

WHEREAS, New Hampshire Electric Cooperative, Inc. a utility selling electricity under the jurisdiction of this commission has filed with the commission a copy of its Special Contract No. 79 with Mount Cranmore, Inc. effective December 1, 1988 for electrical service at rates other than those fixed by its schedule of general application; and

WHEREAS, this Special Contract is intended to provide for the continuation of the voluntary interruptible load program approved by the commission on November 15, 1977 under Puc Order No. 13,011 (62 NH PUC 349); and

WHEREAS, this Special Contract also contains an additional special incentive program for the months of December 1988 through February 1989 conforming to an arrangement for interruptible loads between the Cooperative and its wholesale supplier, Public Service Company of New Hampshire (PSNH); and

WHEREAS, upon investigation and consideration, this commission finds that special circumstances exists relative thereto, which render the terms and conditions thereof just and consistent with the public interest; it is hereby

ORDERED NISI, that the New Hampshire Electric Cooperative be,

and hereby is, authorized to implement the above described Special Contract which shall be filed and made public as part of the published schedules of this utility; and it is

FURTHER ORDERED, that the contract remain in effect for one year only; and it is

FURTHER ORDERED, that the contract be renegotiated such that the determination of the customers interrupted load be based on a measure of uninterrupted load during non-peak alert periods; and it is

FURTHER ORDERED, that the New Hampshire Electric Cooperative publish 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 26, 1988 and be documented by affidavit to be made on a copy of this order and filed with the commission on or before January 13, 1989; and it is

FURTHER ORDERED, that any interested party who objects to or wishes to amend this order should file such objection or proposed amendment by January 13, 1989. If a proposed amendment or objection is filed, the commission will promptly schedule a hearing thereon with the rates continued in this contract being subject to refund should the commission so order; and it is

FURTHER ORDERED, that this order nisi will be effective on December 1, 1988 unless the commission provides otherwise in a supplemental order issued prior to January 20, 1989.

By order of the Public Utilities Commission of New Hampshire this sixteenth day of December, 1988.

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NH.PUC*12/16/88*[52109]*73 NH PUC 514*New Hampshire Electric Cooperative, Inc.

[Go to End of 52109]

73 NH PUC 514

Re New Hampshire Electric Cooperative, Inc.

Additional party: Loon Mountain Recreation Corporation

DR 88-196
Order No. 19,266

New Hampshire Public Utilities Commission

December 16, 1988

ORDER nisi authorizing an electric cooperative to provide service at a special contract rate to a customer with interruptible loads.

RATES, § 322 — Electric rate design — Special contract rate — Interruptible loads.

[N.H.] An electric cooperative was conditionally authorized to provide service at a special contract rate to a customer with interruptible loads where (1) the contract was intended to provide for the continuation of the voluntary interruptible load program approved by prior order, and (2) it was found that special circumstances existed that rendered the contract just and consistent with the public interest; final authorization was conditioned on the public having an opportunity to respond in support or opposition to the contract.

By the COMMISSION:

ORDER

WHEREAS, New Hampshire Electric Cooperative, Inc. a utility selling electricity under the jurisdiction of this commission has filed with the commission a copy of its Special Contract No. 80 with Loon Mountain Corporation, effective December 1, 1988 for electrical service at rates other than those fixed by its schedule of

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general application; and

WHEREAS, this Special Contract is intended to provide for the continuation of the voluntary interruptible load program approved by the commission on November 15, 1977 under Puc Order No. 12,977 (62 NH PUC 329); and

WHEREAS, this Special Contract also contains an additional special incentive program for the months of December 1988 through February 1989 conforming to an arrangement for interruptible loads between the Cooperative and its wholesale supplier, Public Service Company of New Hampshire (PSNH); and

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

ORDERED NISI, that the New Hampshire Electric Cooperative be, and hereby is, authorized to implement the above described Special Contract which shall be filed and made public as part of the published schedules of this utility; and it is

FURTHER ORDERED, that the contract remain in effect for one year only; and it is

FURTHER ORDERED, that the contract be renegotiated such that the determination of the customers interrupted load be based on a measure of uninterrupted load during non-peak alert periods; and it is

FURTHER ORDERED, that the New Hampshire Electric Cooperative publish 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

26, 1988 and be documented by affidavit to be made on a copy of this order and filed with the commission on or before January 13, 1989; and it is

FURTHER ORDERED, that any interested party who objects to or wishes to amend this order should file such objection or proposed amendment by January 13, 1989. If a proposed amendment or objection is filed, the commission will promptly schedule a hearing thereon with the rates continued in this contact being subject to refund should the commission so order; and it is

FURTHER ORDERED, that this order nisi will be effective on December 1, 1988 unless the commission provides otherwise in a supplemental order issued prior to January 20, 1989.

By order of the Public Utilities Commission of New Hampshire this sixteenth day of December, 1988.

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NH.PUC*12/16/88*[52110]*73 NH PUC 515*New Hampshire Electric Cooperative, Inc.

[Go to End of 52110]

73 NH PUC 515

Re New Hampshire Electric Cooperative, Inc.

Additional party: Waterville Company, Inc.

DR 88-197
Order No. 19,267

New Hampshire Public Utilities Commission

December 16, 1988

ORDER nisi authorizing an electric cooperative to provide service at a special contract rate to a customer with interruptible loads.

RATES, § 322 — Electric rate design — Special contract rate — Interruptible loads.

[N.H.] An electric cooperative was conditionally authorized to provide service at a special contract rate to a customer with interruptible loads where (1) the contract was intended

to provide for the continuation of the voluntary interruptible load program approved by prior order, and (2) it was found that special circumstances existed that rendered the contract just and consistent with the public interest; final authorization was conditioned on the public having an opportunity to respond in support or opposition to the contract.

By the COMMISSION:

ORDER

WHEREAS, New Hampshire Electric Cooperative, Inc. a utility selling electricity under the jurisdiction of this commission has filed with the commission a copy of its Special Contract No. 81 with Waterville Company, Inc. effective December 1, 1988 for electrical service at rates other than those fixed by its schedule of general application; and

WHEREAS, this Special Contract is intended to provide for the continuation of the voluntary interruptible load program approved by the commission on November 15, 1977 under Puc Order No. 13,002 (62 NH PUC 347); and

WHEREAS, this Special Contract also contains an additional special incentive program for the months of December 1988 through February 1989 conforming to an arrangement for interruptible loads between the Cooperative and its wholesale supplier, Public Service Company of New Hampshire (PSNH); and

WHEREAS, upon investigation and consideration, this commission finds that special circumstances exists relative thereto, which render the terms and conditions thereof just and consistent with the public interest; it is hereby

ORDERED NISI, that the New Hampshire Electric Cooperative be, and hereby is, authorized to implement the above described Special Contract which shall be filed and made public as part of the published schedules of this utility; and it is

FURTHER ORDERED, that the contract remain in effect for one year only; and it is

FURTHER ORDERED, that the contract be renegotiated such that the determination of the customers interrupted load be based on a measure of uninterrupted load during non-peak alert periods; and it is

FURTHER ORDERED, that the New Hampshire Electric Cooperative publish 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 26, 1988 and be documented by affidavit to be made on a copy of this order and filed with the commission on or before January 13, 1989; and it is

FURTHER ORDERED, that any interested party who objects to or wishes to amend this order should file such objection or proposed amendment by January 13, 1989. If a proposed amendment or objection is filed, the commission will promptly schedule a hearing thereon with the rates continued in this contract being subject to refund should the commission so order; and it is

FURTHER ORDERED, that this order nisi will be effective on December 1, 1988 unless the commission provides otherwise in a supplemental order issued prior to January 20, 1989.

By order of the Public Utilities Commission of New Hampshire this sixteenth day of December, 1988.

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NH.PUC*12/16/88*[52111]*73 NH PUC 517*Public Service Company of New Hampshire

[Go to End of 52111]

73 NH PUC 517

Re Public Service Company of New Hampshire

Additional party: Gunstock Area

DR 88-190
Order No. 19,268

New Hampshire Public Utilities Commission

December 16, 1988

ORDER nisi authorizing an electric utility to provide service at a special contract rate to a customer with interruptible loads.

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1. RATES, § 211 — Special contract rates — Commission power to approve — Statutory standard.

[N.H.] The commission has authority under RSA 378:18 to approve special contracts for service at rates other than those fixed in the public utility's schedules, provided that special circumstances exist which render departure from the general schedules to be just and consistent with the public interest. p. 517.

2. RATES, § 322 — Electric rate design — Special contract rate — Interruptible loads.

[N.H.] An electric utility was conditionally authorized to provide service at a special contract rate to a customer that had interruptible loads but failed to meet the eligibility requirements for the utility's winter interruptible service rate; approval of the contract rate was consistent with the commission's acceptance of a recommendation that special contracts for customers with interruptible loads that do not precisely meet the terms set forth for eligibility for the winter interruptible rate, but are reasonably consistent with the design of the interruptible rate, should be expeditiously approved. p. 517.

By the COMMISSION:

ORDER

WHEREAS, on October 14, 1988, the New Hampshire Public Utilities Commission issued Report and Order No. 19,198 (73 NH PUC 409) approving tariff pages permitting Public Service Company of New Hampshire (hereinafter PSNH) to offer Winter Interruptible Service and use of Customer Standby Generation Rate WI for effect on December 1, 1988; and

"**[1, 2]**" WHEREAS, in its report the commission accepted the recommendations of the parties which included a recommendation for an expedited procedure for approving special contracts for customers with interruptible loads with operational characteristics that do not precisely meet the terms set forth in the tariff pages but are reasonably consistent with the rate design of Rate WI; and

WHEREAS, the commission has authority under N.H. RSA 378:18 to approve special contracts for service at rates other than those fixed in the public utility's schedules if special circumstances exist which render departure from the general schedules to be just and consistent with the public interests; and

WHEREAS, the proposed contract with Gunstock Area provides for modification of the definition of Interruptible Demand under Rate WI to eliminate an inequity that would exist for Gunstock Area under the standard definition of Interruptible Demand; and

WHEREAS, the commission finds that the terms of the agreement between PSNH and Gunstock Area are reasonably consistent with the terms of Rate WI, and PSNH has demonstrated that Gunstock Area has evidenced special circumstances which render departure from the terms of Rate WI to be just and consistent with the public interest; it is hereby

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ORDERED NISI, that Public Service Company of New Hampshire be, and hereby is, authorized to implement the above described special contract which shall be filed and made public as part of the published schedules of this utility; and it is

FURTHER ORDERED, that PSNH publish 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 made no later than December 26, 1988 and be documented by affidavit to be made on a copy of this order and filed with the commission on or before January 13, 1989; and it is

FURTHER ORDERED, that any interested party who objects to or wishes to amend this order should file such objection or proposed amendment by January 13, 1989. If a proposed amendment of objection is filed, the commission will promptly schedule a hearing thereon with the rates continued in this contract being subject to refund should the commission so order; and it is

FURTHER ORDERED, that this order nisi will be effective on December 1, 1988 unless the commission provides otherwise in a supplemental order issued prior to January 20, 1989.

By order of the Public Utilities Commission of New Hampshire this sixteenth day December, 1988.

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[Go to End of 52112]

73 NH PUC 520

Re New England Hydro-Transmission Corporation

DF 88-115
Order No. 19,270

New Hampshire Public Utilities Commission

December 16, 1988

ORDER authorizing an electric utility to enter financing arrangements for expansion of the transmission interconnection between the electric systems of the New England Power Pool and Hydro-Quebec.

SECURITY ISSUES, § 57 — Construction financing — Hydro-Quebec interconnection — Electric utility.

[N.H.] An electric utility was authorized to enter credit arrangements for the purpose of financing an expansion to the transmission interconnection between the New England Power Pool and Hydro-Quebec.

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i. SECURITY ISSUES, § 111 — Financing methods — "Multiple Option Credit Facility" — Electric utility — Hydro-Quebec interconnection.

[N.H.] Discussion of a "Multiple Option Credit Facility" that an electric utility was authorized to implement with National Westminster Bank PLC, as a means of financing the expansion of the transmission interconnection between the New England Power Pool and Hydro-Quebec. p. 520.

APPEARANCES: Richard B. Couser, Esquire, of Orr & Reno, Kirk L. Ramsauer, Esquire, and Mark V. B. Tremallo, Esquire, for New England Hydro-Transmission Corporation; Eugene F. Sullivan and Merwin Sands, for the staff.

By the COMMISSION:

REPORT

[i] New England Hydro-Transmission Corporation (the "Company" or "NH Hydro"), is a utility subject to our jurisdiction. On August 8, 1988, the Company filed a petition requesting authorization and approval from the Commission of financing arrangements pursuant to which the Company and New England Hydro-Transmission Electric Company, Inc., a Massachusetts corporation ("Mass Hydro"), may borrow up to $300 million for expansion of the existing transmission interconnection between the electric systems of the New England Power Pool and Hydro-Quebec. Specifically, the Company requested authorization of the implementation of a Multiple Option Credit Facility ("Credit Facility") with National Westminster Bank PLC

("NatWest"), as lead manager of a syndicate of participating banks ("Banks"), which will serve as an integral part of the construction financing of Phase II.

The commission previously approved, by Order No. 19,058 dated April 11, 1988, the Petition of the Company and certain other New England electric utilities for issuance of common stock by the Company and the terms of certain Phase II contracts and related guarantees, all in connection with Phase II (DE 87-124).

A public hearing was held on the Petition on October 13, 1988. The Company presented its case through one witness, Robert H. McLaren, its Assistant Treasurer, who testified as to the terms and conditions of the proposed financing. The Company presented four exhibits: NEH-1, prefiled testimony of Robert H. McLaren; NEH-2, a Letter of Intent with NatWest; NEH-3, a diagram of the proposed

Page 520

transaction; and NEH-4 the Company's prefiled financial statements. The Company also represented that it would file with the commission copies of the primary credit documents as soon as drafts are available.

Testimony was presented that the total cost of Phase II construction in the United States is estimated by the Company to be approximately $565 million. Of this amount, NH Hydro and Mass Hydro are expected to spend approximately $445 million for construction of (1) 133 miles of high voltage direct current transmission line from Monroe, New Hampshire to the Ayer/Groton town line in Massachusetts, and (2) a converter terminal facility in Massachusetts. The remaining costs of Phase II are expected to be funded separately by New England Power Company and other New England utilities. Of the $445 million to be funded by NH Hydro and Mass Hydro, up to $300 million is proposed to be borrowed through the proposed Credit Facility. Up to 40% of the construction costs will be provided by the stockholders of NH Hydro and Mass Hydro.

NEHFC, the proposed financing company, will be incorporated prior to the closing of the Credit Facility for the purpose of facilitating the debt financing by NH Hydro and Mass Hydro in connection with Phase II. The Company and Mass Hydro will each own 50% of the common stock of NEHFC. Mr. McLaren explained that the financing company is expected to eliminate duplicate borrowing arrangements by NH Hydro and Mass Hydro, and to reduce the cost of borrowing for the Phase II project. NEHFC will be the direct obligor of all funds advanced by the Banks. NEHFC's obligations will be unconditionally guaranteed on a several basis by both the Company and Mass Hydro. NH Hydro and Mass Hydro propose to enter into a Master Agreement with NEHFC which will evidence their respective obligations. Mr. McLaren testified that at no time will NH Hydro's obligations under the Credit Facility exceed $130 million.

Mr. McLaren explained that the Banks will be granted security interests in all of NH Hydro's rights under the Phase II DC Support Agreements to receive payments from the utilities participating in the Phase II project, including the rights to "cash deficiency commitments" previously reviewed by the commission in DE 87-124. These cash deficiency commitments constitute a several guarantee of the debt of NH Hydro and Mass Hydro by the participating utilities. Mr. McLaren also described the guarantees by equity sponsors of NH Hydro and Mass

Hydro of the cash deficiency commitments of certain below investment grade participants in the Phase II project. These equity sponsor guarantees constitute a further guarantee of the obligations of certain participating utilities and were also reviewed by the commission in DE 87-124. As additional security, the Banks will be granted security interests in and a mortgage of the principal properties of NH Hydro, Mass Hydro, and NEHFC, including leasehold interests. The obligations of each entity to the Banks will be secured by the physical assets of all three companies. Mr. McLaren explained that this sharing of collateral is necessitated by the close relationships among NH Hydro, Mass Hydro, and NEHFC in the Phase II project.

Under the Credit Facility the Banks will make loans to NEHFC under a variety of lending provisions, at the option of NEHFC. First, the Banks will be obligated to make same day advances to NEHFC with no prior notice at the higher of the NatWest *prime rate* then in effect or the

then applicable federal funds rate plus 1/8 of 1%. Such advances would remain outstanding for up to a maximum of seven business days.

Second, upon not less than three days' notice, Banks will be obligated to make U.S. dollar 1, 2, 3 or 6 month London Inter-Bank Offered Rate (LIBOR)-based advances to NEHFC at a maximum interest rate. For the first three years of the Credit Facility, the maximum interest rate would be LIBOR plus 1/8 of 1%. For the next three years, the maximum interest rate would be LIBOR plus 1/4 of 1%. For the remaining years, the maximum interest rate would be LIBOR plus 3/8 of 1%.

Third, upon not less than three days' notice NEHFC may request the Banks and/or other selected financial institutions which participate as members of a tender panel to bid competitively to make U.S. dollar 1, 2, 3 or 6 month LIBOR-based advances. Mr. McLaren explained that only bids from a tender panel for advances at interest rates lower than the maximum interest rate would be accepted.

In addition, NEHFC will be entitled to request, upon similar notice, short term advances from NatWest in its capacity as agent bank for a minimum aggregate amount of $1 million up to a maximum of $10 million. Such advances will be priced at NatWest's current cost of funds plus 1/8 of 1% and may remain outstanding for up to 60 days.

The witness explained that the Credit Facility further contemplates that should NEHFC wish to issue commercial paper in lieu of, or in conjunction with, its direct borrowing options, the Banks agree to provide “back up” for a letter of credit to support such commercial paper issuance. This agreement to back up a letter of credit would require the Company to secure one or more letters of credit from the Bank participants and is extended unconditionally for the initial three years of the credit facility and extendable at the mutual option of NEHFC and the Banks on a year-by-year basis thereafter.

The credit facility is proposed to mature on June 30, 1998. The $300 million commitment amount available under the credit facility would be reduced in equal semiannual amounts beginning January 1, 1994. If Phase II is cancelled, the term of the credit facility shall be terminated 180 days from the date of cancellation. The unused portion of the credit facility may

be cancelled in whole or in part by NEHFC without penalty upon 30 days, prior notice; provided, however, that at no time shall the uncancelled amount be less than the face value of the advances outstanding to NEHFC. Amounts cancelled under the credit facility may not be reinstated.

In order to implement the credit facility, the Company, Mass Hydro, and NEHFC will enter into a credit agreement, security agreements, mortgages, the aforementioned master agreement, and other closing documents.

Prior to closing NEHFC will designate a portion of the total credit facility which may be utilized during each semiannual period during the construction of Phase II, not to exceed $300 million. Any remaining balance of the $300 million not designated as being available may not be accessed during each such semiannual period.

In addition to the estimated fees of $770,000 set forth in Exhibit NEH-4, Mr. McLaren also explained in detail the estimated fees to be paid in connection with the construction financing. Under the credit facility, a fee of 1/8 of 1% per year will be payable on the available portion of the facility; and a fee of 1/16 of 1% per year will be payable on the unavailable portion. The commitment fees are payable

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by NEHFC to the Banks, quarterly in arrears regardless of the extent to which the credit facility is used.

An underwriting fee of $270,000 will be payable to NatWest as lead manager of the Banks upon closing. In addition, a participation fee of $210,000 will be payable to the Banks upon closing.

The administration of the credit facility will be conducted by NatWest in its additional capacity as agent bank for an initial annual agency fee of 30,000.

If NEHFC elects to issue commercial paper supported by a bank letter of credit, a letter of credit risk participation fee of 1/8 of 1% per year of the amount of supported commercial paper issued will be paid to the Banks.

Upon investigation and consideration of the evidence submitted, the commission is of the opinion that granting the petition will be consistent with the public good.

Our order will issue accordingly.

ORDER

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

ORDERED, that New England Hydro-Transmission Corporation be and it hereby is authorized under RSA c. 369:1 to implement a credit arrangement with National Westminster Bank PLC and a syndicate of participating banks (the “Banks”), under which arrangement the Company may issue notes and other evidences of indebtedness and borrow, from time to time, up to $130,000,000 at any one time outstanding from New England Hydro Finance Company, Inc.; and it is

FURTHER ORDERED, that the Company be and it hereby is authorized to guarantee

unconditionally, from time to time, the indebtedness of New England Hydro Finance Company, Inc. under said credit arrangements, such guarantee not to exceed $130,000,000 at any one time outstanding; and it is

FURTHER ORDERED, that the Company be and it hereby is authorized under RSA c. 369:2 to grant a mortgage and security interest in its principal properties, such authorization to include, but not be limited to, (i) the granting by the Company to lenders in the credit arrangement of security interests in all of the Company's rights under certain Phase II support agreements and other Phase II agreements, including the rights to cash deficiency commitments to secure the aforementioned guarantee, and (ii) the granting by the Company to said lenders of security interests in and a mortgage of all of the physical properties of the Company, including its leasehold interests to secure the obligations of the Company, New England Hydro-Transmission Electric Company, Inc., and New England Hydro Finance Company, Inc. to the Banks under credit arrangements; and it is

FURTHER ORDERED, that the closing of the proposed financing authorized hereunder shall occur on or before March 31, 1989, and not thereafter, unless such period is extended by order of this commission; and it is

FURTHER ORDERED, that on or about January first and July first in each year, said New England Hydro-Transmission Corporation shall file with this commission a detailed statement, duly sworn by its treasurer or assistant treasurer, showing the disposition of the proceeds of such financing, until the expenditure of the whole of said proceeds shall have been fully accounted for.

By order of the Public Utilities Commission of New Hampshire this sixteenth day of December, 1988.

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NH.PUC*12/16/88*[52113]*73 NH PUC 524*New England Hydro- Transmission Corporation

[Go to End of 52113]

73 NH PUC 524

Re New England Hydro-Transmission Corporation

DSF 85-155
Third Supplemental Order No. 19,272
99 PUR4th 260
New Hampshire Public Utilities Commission
December 16, 1988

PETITION by electric utility for authority to proceed with construction of a new transmission line; granted.

ELECTRICITY, § 7 — Transmission lines — Authorization — Factors — Reliability standards of power pools.

[N.H.] Final approval was given to a proposed project for the construction of a direct current electric transmission line, where the electric utility sponsoring the project demonstrated that the project would meet reliability and stability requirements of neighboring power pools without those requirements infringing upon the power levels being contracted for in the construction of the line.

APPEARANCES: Orr and Reno by Richard B. Couser, Esquire on behalf of the Applicant; Environmental Protection Division of the Attorney General's Office by Bradford W. Kuster, Assistant Attorney General and Larry M. Smukler, Assistant Attorney General on behalf of the public; Brown, Olson and Wilson by Michael A. Walker, Esquire on behalf of the Powerline Awareness Campaign.

By the COMMISSION:

REPORT

On October 27, 1988 the New England Hydro-Transmission Corporation filed with this Commission a "Motion to Determine Compliance with Reliability and Stability Condition." It requested a schedule for filing of testimony and hearing dates and the determination that the applicant has complied with the certain conditions pertaining to reliability and stability as directed by our previous supplemental order no. 18,532 (72 NH PUC 15).

In supplemental order no. 18,532, dated January 7, 1987, and order no. 18,499, dated December 8, 1986 (71 NH PUC 727), this commission issued a conditional certificate of site and facility to the petitioner for the construction, maintenance and operation of a direct current transmission line and related facilities approximately 121 miles in length between Monroe, New Hampshire and the New Hampshire/Massachusetts state line. The orders were issued in consideration of the report and findings of the Bulk Power Facility Site Evaluation Committee which were issued on October 8, 1986 which found that the proposed facility

a) will not unduly interfere with the orderly development of the region; and

b) will not have an unreasonable adverse effect on aesthetics, historic sites, air and water quality, the natural environment and the public health and safety.

The order further required adherence to seven conditions stipulated to by the petitioner and the Office of Attorney General.

Finally, and specifically relevant to this order, the commission's order nos. 18,532 and 18,499 imposed a further stipulation (72 NH PUC at 17; 71 NH PUC at 774):

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...

In response to the instant motion, on November 17, 1988 the commission issued an order of notice setting hearings for December 9 and 12, 1988 at the commission's offices. On November 29, 1988 the petitioner submitted an affidavit of publication in the *Union Leader* on November 21, 1988. By memo of November 29, 1988 the commission notified all Site Evaluation Committee members of the proceeding.

The company presented eight witnesses in support of its position that all conditions have now been met. NEPOOL has agreed to operating the Phase II tie at appropriate levels that do not jeopardize regional reliability or place restrictions on the MEN systems, unless such restrictions are agreed upon by affected parties within the interconnected systems in accordance with applicable inter-pool operating agreements. MEN is the acronym for the combined regions of the Mid-Atlantic Area Council (MAAC), the East Central Area Reliability Coordination Agreement (ECAR), and the Northeast Power Coordinating Council (NPCC) which includes utilities in New Jersey, Delaware, the District of Columbia, Central and eastern Maryland, most of Pennsylvania, New England, New York, Quebec, Ontario, New Brunswick, Nova Scotia, Michigan, Indiana, Ohio, West Virginia, Kentucky, western Pennsylvania, and southwestern Virginia. Witnesses testified that except for 200 to 400 hours per year the system will operate in isolation on the Hydro-Quebec System, and that this operating plan is more secure than the dynamic isolation scheme previously proposed. A backup New England load shedding system is no longer required.

The company further reported on exhaustive studies of expected operating conditions which identified several operating limits. The major limits will require that power transfers on the line be reduced to a level between 1500 and 2000 MW when west to east power transfers in the Pennsylvania, Jersey, Maryland (PJM) system are high. This could occur as much as 50% of the time. Additionally, the transfers would have to be limited to under 700 MW during hours when the system is operated in the synchronous mode instead of the isolated mode. There may also be other types of operating conditions which could require reductions in power transfers but they are of lesser importance.

The company testified that these reliability related limits will not prevent the line from operating in conformance with the contract conditions and the minimum transfer of 7 terrawatt hours per year.

The company also provided testimony concerning the continued economic viability of the project. The benefit/cost ratios for the base case assuming a ten-year depreciation of the line has fallen from the 2.05 calculation presented in 1986 to 1.66. The decline is primarily due to changes in assumptions regarding projected fuel costs and the addition of the energy reserve cost. The company also presented a low fuel cost sensitivity case in which fuel costs were presumed to fall by 25% which resulted in a benefit/cost ratio of 1.33. In contrast to testimony presented in 1986, the company did not test for the sensitivity of project benefits to fuel costs 50% below base case assumptions, or to project capital costs at the high end of the range of the

cost estimate. Sensitivity analysis did show that restricting the maximum imports to 1,500 MW for 100% of the import hours had only minimal effects on project viability (benefit/cost ratio equal to 1.64), and that a need for capacity within NEPOOL when the project achieves commercial reliability raises the benefit/cost ratio to 1.8.

The studies were submitted to and reviewed by the Economic Regulatory Administration of the Department of Energy as part of the application of the Vermont Electric Transmission Company for an amendment to Presidential Permit PP-76 authorizing it to construct, connect, operate and maintain electric transmission facilities at the international border between the United States and Canada. The Department of Energy granted the request for the amendment effective September 28, 1988.

Testimony from witnesses representing the New York Power Pool, the Northeast Power Coordinating Council and PJM (Pennsylvania, New Jersey and Maryland) support the petitioner's contention that reliability and stability concerns of neighboring pools have been met.

Accordingly, the commission finds that the applicant has adequately demonstrated 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 contracted for power.

We also find that the public interest requires commission staff to be informed on a continuing basis regarding the operations and reliability of the transmission system. Therefore, we require that the company provide to the commission staff, and keep current, copies of operating procedures for the 450 KV DC line. Furthermore, the company shall provide a quarterly report on operations and an annual summary which describes the reliability of the line and any trends in reliability statistics. These reports are to be provided in a format agreed upon with staff at the time the line begins operation.

Our order will issue accordingly.

SUPPLEMENTAL ORDER

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

ORDERED, that pursuant to RSA Chapter 162-F, a Certificate of Site and Facility be, and hereby is, granted to New England Hydro-Transmission Corporation for the construction, maintenance and operation of a direct current transmission line and related facilities approximately 121 miles in length between Monroe, New Hampshire and the New Hampshire/Massachusetts state line; and it is

FURTHER ORDERED, that the company shall file reporting documents in accordance with the foregoing report.

By order of the Public Utilities Commission of New Hampshire this sixteenth day of December, 1988.

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73 NH PUC 518

Re Public Service Company of New Hampshire

Additional party: Meadowgreen Wildcat Mountain Corporation

DR 88-191
Order No. 19,269

New Hampshire Public Utilities Commission

December 16, 1988

ORDER nisi authorizing an electric utility to provide service at a special contract rate to a customer with interruptible loads.

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1. RATES, § 211 — Special contract rates — Commission power to approve — Statutory standard.

[N.H.] The commission has authority under RSA 378:18 to approve special contracts for service at rates other than those fixed in the public utility's schedules, provided that special circumstances exist which render departure from the general schedules to be just and consistent with the public interest. p. 519.

2. RATES, § 322 — Electric rate design — Special contract rate — Interruptible loads.

[N.H.] An electric utility was conditionally authorized to provide service at a special contract rate to a customer that had interruptible loads but failed to meet the eligibility requirements for the utility's winter interruptible service rate; approval of the contract rate was consistent with the commission's acceptance of a recommendation that special contracts for customers with interruptible loads that do not precisely meet the terms set forth for eligibility for the winter interruptible rate, but are reasonably consistent with the design of the interruptible rate, should be expeditiously approved. p. 519.

Page 518

By the COMMISSION:

ORDER

WHEREAS, on October 14, 1988, the New Hampshire Public Utilities Commission issued Report and Order No. 19,198 (73 NH PUC 409) approving tariff pages permitting Public Service Company of New Hampshire (hereinafter PSNH) to offer Winter Interruptible Service and use of Customer Standby Generation Rate WI for effect on December 1, 1988, and

"**[1, 2]**" WHEREAS, in its report the commission accepted the recommendations of the parties which included a recommendation for an expedited procedure for approving special contracts for customers with interruptible loads with operational characteristics that do not precisely meet the terms set forth in the tariff pages but are reasonably consistent with the rate design of Rate WI; and

WHEREAS, the commission has authority under N.H. RSA 378:18 to approve special contracts for service at rates other than those fixed in the public utility's schedules if special circumstances exist which render departure from the general schedules to be just and consistent with the public interests; and

WHEREAS, the proposed contract with Meadowgreen Wildcat Mountain Corporation provides for modification of the definition of Interruptible Demand under Rate WI to eliminate an inequity that would exist for Meadowgreen Wildcat Mountain Corporation under the standard definition of Interruptible Demand; and

WHEREAS, the commission finds that the terms of the agreement between PSNH and Meadowgreen Wildcat Mountain Corporation are reasonably consistent with the terms of Rate WI, and PSNH has demonstrated that Meadowgreen Wildcat Mountain Corporation has evidenced special circumstances which render departure from the terms of Rate WI to be just and consistent with the public interest; it is hereby

ORDERED NISI, that Public Service Company of New Hampshire be, and hereby is, authorized to implement the above described special contract which shall be filed and made public as part of the published schedules of this utility; and it is

FURTHER ORDERED, that PSNH publish 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 made no later than December 26, 1988 and be documented by affidavit to be made on a copy of this order and filed with the commission on or before January 13, 1989; and it is

FURTHER ORDERED, that any interested party who objects to or wishes to amend this order should file such objection or proposed amendment by January 13, 1989. If a proposed amendment of objection is filed, the commission will promptly schedule a hearing thereon with the rates continued in this contract being subject to refund should the commission so order; and it is

FURTHER ORDERED, that this order nisi will be effective on December 1, 1988 unless the commission provides otherwise in a supplemental order issued prior to January 20, 1989.

By order of the Public Utilities Commission of New Hampshire this sixteenth day of December, 1988.

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NH.PUC*12/21/88*[52114]*73 NH PUC 526*Chichester Telephone Company

[Go to End of 52114]

73 NH PUC 526

Re Chichester Telephone Company

DE 88-189
Order No. 19,273

New Hampshire Public Utilities Commission

December 21, 1988

ORDER authorizing an independent telephone company to implement two new optional intrastate toll service plans.

Page 526

SERVICE, § 468 — Telephone — Intrastate toll service — Optional service plans — Independent telephone company.

[N.H.] An independent telephone carrier was authorized to implement two new optional intrastate toll service plans, Circle Calling Service and Granite State Toll Service; the plans, which mirrored optional intrastate toll service plans offered by the dominant local exchange carrier, were found to be in the public good.

By the COMMISSION:

ORDER

WHEREAS, Chichester Telephone Company filed with the commission on December 1, 1988 its proposed tariff offering Circle Calling Service and Granite State Toll Service; and

WHEREAS, Chichester already offers Selective Calling and wishes to enlarge the number of optional intrastate toll plans available to its subscribers; and

WHEREAS, the proposed offerings of Circle Calling Service and Granite State Toll Service mirror NET's Circle Calling Service and Granite State Toll Service; and

WHEREAS, offerings of Circle Calling Service and Granite State Toll Service are deemed by the commission to be in the public good; it is therefore

ORDERED, that NHPUC No. 3 — Telephone, Section 7, Original Sheets 2 through 6 be hereby approved, effective January 15, 1989.

By Order of the New Hampshire Public Utilities Commission this twenty-first day of December, 1988.

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[Go to End of 52115]

73 NH PUC 527

Re New England Telephone and Telegraph Company, Inc.

DE 88-200
Order No. 19,276

New Hampshire Public Utilities Commission

December 23, 1988

ORDER authorizing a local exchange telephone carrier to revise the boundary between two of its exchanges.

SERVICE, § 445 — Telephone — Exchange areas and boundaries — Local exchange carrier.

[N.H.] A local exchange telephone carrier was authorized to revise the boundary between two of its exchanges so that the area affected by the revision could be served more economically and the exchange boundary and the town line would be coterminus.

By the COMMISSION:

ORDER

WHEREAS, on December 15, 1988, New England Telephone & Telegraph Company Inc. (NET or New England Telephone) filed with the commission its petition seeking authorization to change its boundary between its Sullivan and Harrisville exchanges; and

WHEREAS, such change was prompted by a request for service received from a customer seeking service from the Sullivan Exchange, but whose premises were within the Harrisville Exchange; and

WHEREAS, this request surfaced an error in which another resident of that area had been provided Sullivan Exchange service; and

WHEREAS, NET review revealed the affected area could be served more economically from the Sullivan exchange; and

WHEREAS, the change also makes exchange boundary and town line coterminus; and

WHEREAS, the commission finds such in the public interest; it is

ORDERED, that NET file revisions to its Part A, Section 5, Sheets 27 and 72 of Tariff No.

75, such revisions to reflect the changes authorized herein and depicted on draft maps accompanying the filing; and it is

FURTHER ORDERED, that such revisions be, and hereby are, effective as of the date of this order; and it is

FURTHER ORDERED, that customers affected by this revision be notified by letter.

By order of the Public Utilities Commission of New Hampshire this twenty-third day of December, 1988.

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NH.PUC*12/23/88*[52116]*73 NH PUC 528*Pittsfield Aqueduct Company, Inc.

[Go to End of 52116]

73 NH PUC 528

Re Pittsfield Aqueduct Company, Inc.

DR 88-192
Order No. 19,277

New Hampshire Public Utilities Commission

December 23, 1988

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

RATES, § 604 — Water rates — Meter charges.

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

By the COMMISSION:

ORDER

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

WHEREAS, staff audit revealed that as of this date, Pittsfield has installed three hundred and thirty meters under Order No. 15,556 (67 NH PUC 264) leaving a remainder of one hundred and thirty-two customers still unmetered; and

WHEREAS, Pittsfield has submitted that the capital costs of fifty meters installed during the year 1988 is with attendant increased operating expenses of $414 for depreciation and $100 for meter reading; and

WHEREAS, an audit by staff has revealed that the amount should be reduced to $8,257; and

WHEREAS, the increases so incurred result in an additional revenue requirement of $1,542; it is hereby

ORDERED, that Pittsfield Aqueduct Company, Inc. may increase its revenue, effective with all bills rendered after January 1, 1989, by $1,542. The Company will file tariff pages to give evidence to this 1988 step increase.

By order of the Public Utilities Commission of New Hampshire this twenty-third day of December, 1988.

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NH.PUC*12/29/88*[52104]*73 NH PUC 508*Southern New Hampshire Water Company, Inc.

[Go to End of 52104]

73 NH PUC 508

Re Southern New Hampshire Water Company, Inc.

DE 88-140
Order No. 19,261

New Hampshire Public Utilities Commission

December 29, 1988

ORDER establishing procedural schedule for hearings on a petition to provide water service.

PROCEDURE, § 13 — Scope of proceedings — Establishment of procedural schedule — Petition to provide water service.

[N.H.] The proposed procedural schedule for hearings on a petition to provide water service was accepted.

APPEARANCES: Attorney James Hood on behalf of Southern New Hampshire Water Company, Inc., and Eugene F. Sullivan, III, Esq. on behalf of the staff of the Public Utilities Commission.

By the COMMISSION:

REPORT

On prehearing conference of December 7, 1988, Southern New Hampshire Water Company, Inc. (Southern) filed a petition on October 31, 1988, for authority to engage in business as a public utility in a limited area of the Town of Atkinson. Southern also requested in its petition that the commission enter an order allowing a modified version of Southern's existing Londonderry tariff to take affect with respect to the proposed franchise.

The commission issued an order of notice on November 18, 1988, scheduling a prehearing conference on the petition for two o'clock in the afternoon of December 7, 1988. Southern timely filed the required affidavit of publication of the order of notice.

No interventions were filed and the only parties represented at the prehearing conference were Southern and the commission staff. After conferring, the parties stipulated to the following procedural schedule:

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

December 16, 1988	Southern to file amended petition.
January 27, 1989	Southern to file its direct testimony and exhibits.
February 17, 1989	Staff to file data requests of Southern.
March 10, 1989	Southern to respond to staff data requests.
March 31, 1989	Staff prefiled testimony due.
April 7, 1989	Southern's data requests to staff are due.
April 21, 1989	Staff's responses to Southern's data requests due.
April 28, 1989	Off record prehearing conference to narrow the issues.
May 5, 1989	Southern and staff rebuttal testimony due.
May 16 & 17, 1989	Hearing on the merits.

The proposed procedural schedule appears to satisfy the needs of the parties and conform to the commission scheduling requirements. We will accordingly accept the proposed schedule to govern the duration of these proceedings.

Our order will issue accordingly.

ORDER

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

ORDERED, that the procedural schedule proposed by the parties as specified in the accompanying report is hereby accepted.

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

December, 1988.

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[Go to End of 52120]

73 NH PUC 529

Re Resort Waste Services Corporation

DS 87-218
Order No. 19,278

New Hampshire Public Utilities Commission

December 30, 1988

ORDER authorizing an entity to operate a wastewater treatment facility.

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1. CERTIFICATES, § 125 — Sewage disposal — Operation of wastewater treatment facility.

[N.H.] A motion by a sewage disposal company for approval of an entity as operator of the company's wastewater treatment facility was approved where commission staff determined that the entity was qualified to provide operating services; commission review of the costs associated with the contract under which the entity will provide operating services was deferred to an upcoming rate case. p. 529.

2. CERTIFICATES, § 65 — Local consents — Water Supply and Pollution Control Division — Sewage disposal — Operation of wastewater treatment facility.

[N.H.] A sewage disposal company and the designated operator of its wastewater treatment facility were directed to comply with all requirements of the Water Supply and Pollution Control Division relative to operator certification and/or operating procedures. p. 529.

By the COMMISSION:

ORDER

WHEREAS, Resort Waste Services Corporation has made a motion dated December 20, 1988 for approval of YWC, Inc. (YWC) as operator of the company's wastewater treatment facility located in Bretton Woods, New Hampshire; and

WHEREAS, the commission issued order no. 19,016 on February 23, 1988 granting permission to construct the plant and other apparatus necessary for the provision of service provided that Resort Waste submits information indicating what entity will provide operating services, and the commission approves of the operating ability of that entity; and

[1] WHEREAS, the commission staff has reviewed the qualifications of YWC, as described in the motion, to provide operating services and has determined that they have the ability to do so; and

WHEREAS, the company's motion and the appended contract also deal with other issues such as the cost of the subcontracted services and the contract period, which are not directly related to the capability of YWC to provide the required services; and

WHEREAS, the commission has not yet received the complete rate filing of Resort Waste Services Inc.; it is

HEREBY ORDERED, that the ability of YWC to provide operating services is approved; and it is

FURTHER ORDERED, that to the extent the motion requires commission review or approval of contract costs, contract period and related issues, these matters will be deferred to the upcoming rate case; and it is

[2] FURTHER ORDERED, that YWC and Resort Waste Services comply with all requirements of the Water Supply and Pollution Control Division relative to operator certification and/or operating procedures.

By order of the Public Utilities Commission of New Hampshire this thirtieth day of December, 1988.

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Endnotes

1 (Popup)

[1]The petitioner avers that the F.C.C. requires the petitioner to be capable of serving 75 percent of its potential customers by September 16, 1989 and New Hampshire law requires public utilities to provide safe and adequate service.

2 (Popup)

[2]In *Applied* at 47, the Supreme Court overturned the Town of Merrimack planning board's denial of a site plan approval for a hazardous waste treatment facility because the denial had a direct exclusionary effect on the siting of the facility and thereby had a frustrating effect on the state regulation of hazardous waste.

3 (Popup)

[3]The language of RSA 374:30 I (Supp. 1987) gives planning boards authority to grant exemptions from ordinances, codes, and regulations where the structures are "necessary to furnish utility service for the public health, safety, or general welfare, and for which the utility's said structure being a physically integrated component of the utility's transmission or distribution apparatus."

4 (Popup)

[1]This cash working capital formula is based on the FERC formula which has been accepted by the commission in other rate cases where there is no balance sheet and lead/lag study. It is the equivalent of 45 days of cash working capital.

5 (Popup)

[1]See complaint by MarDec, Inc. and Tariff NHPUC NO. 31, page 16.

6 (Popup)

[2]Complaints received by Economics Department and rate orders in Docket No. DR 83-62 and Docket No. DE 80-206.

7 (Popup)

[3]Complaints received by Consumer Assistance Division and Tariff NHPUC No. 31, page 7.

8 (Popup)

[1]The "meet the competition" tariff as originally proposed would allow Manchester to price a service below its minimum commission approved rate,

without prior commission approval, whenever such pricing was necessary to match the minimum rate charged for similar service by any other cellular carrier.

9 (Popup)

[1]Report Regarding Request for Transfer, Order No. 18,788 (72 NH PUC 349) and Interlocutory Transfer Without Ruling (August 11, 1987).

10 (Popup)

[2]*Id.;* and Tenth Supplemental Order No. 18,901 (November 5, 1987) (72 NH PUC 524).

11 (Popup)

[3]Report Regarding Findings Pursuant to September 2, 1987 Supreme Court Order and Sixth Supplemental Order No. 18,873 (October 14, 1987) (72 NH PUC 485); and Supplemental Report Regarding Findings Pursuant to September 2, 1987 Supreme Court Order and Ninth Supplemental Order No. 18,890 (November 2, 1987) (72 NH PUC 520).

12 (Popup)

[4]The other parties are: The Business and Industry Association of New Hampshire, the Department of Defense, the New Hampshire Electric Cooperative, the City of Nashua, the Town of Rye, and the City of Manchester.

13 (Popup)

[5]Order No. 18,801 (August 25, 1987); Report on Prehearing Conference of August 25, 1987 and Supplemental Order No. 18,805 (August 31, 1987) (72 NH PUC 373); Supplemental Order No. 18,815 (September 4, 1987); Second Supplemental Order No. 18,812 (September 3, 1987); Report Regarding Consumer Advocate's Motion For Rehearing and Third Supplemental Order No. 18,827 (September 14, 1987) (72 NH PUC 390); Report Regarding Consumer Advocate's Motion to Transfer and Fourth Supplemental Order No. 18,828 (September 14, 1987) (72 NH PUC 393); Report Regarding CRR Request for Findings and Fifth Supplemental Order No. 18,832 (September 15, 1987) (72 NH PUC 426); Report Regarding Consumer Advocate Motion for Clarification and Sixth Supplemental Order No. 18,865 (October 2, 1987) (72 NH PUC 483); Sixth Supplemental Order No. 18,873 (October 14, 1987) (72 NH PUC 485); Report Regarding Consumer Advocate's Motion to Compel and Seventh Supplemental Order No. 18,880 (October 21, 1987) (72 NH PUC 502); Report Regarding CRR Motion to Compel and Eighth Supplemental Order No. 18,881 (October 21, 1987) (72 NH PUC 509); Report Regarding Motion to Rehear Order No. 18,881 and Motion for Enlargement of Time and Eleventh Supplemental Order No. 18,911 (November 18, 1987) (72 NH PUC 534); and Report Regarding Motions, Closing of Record and Post Hearing Argument and Twelfth Supplemental Order No. 18,935 (December 21, 1987) (72 NH PUC 569).

14 (Popup)

[6]*Re Public Service Co. of New Hampshire,* 130 N.H. 265, 92 PUR4th 546, 539 A.2d 263 (1988).

15 (Popup)

[1]Internal Revenue Service Advance Notice 87-82, *On Public Utility Taxes,* Released December 3, 1987.

16 (Popup)

[1]Inside wire and customer premises equipment services have been deregulated by the Federal Communications Commission.

17 (Popup)

[1]Gas Service, Manchester, and Concord will hereinafter be collectively referred to as the companies.

18 (Popup)

[1]The New England Electric System (NEES) is a public utility holding company of which Granite State is one of three electric utility operating subsidiaries.

19 (Popup)

[2]The New England Power Company is a generating and transmission subsidiary of the NEES and is the full requirements supplier for Granite State.

20 (Popup)

[3]For purposes of this report the following definitions are applicable: The proxy for the load that would have been recorded during the interruption period "but for" the interruption is the Nominal Peak Period Load. The Firm Power Level is the level of demand that the customer agrees not to exceed for the duration of the interruption period. Nominal Interruptible Load is defined as Nominal Peak Period Load minus the Firm Power Level and is the load made available by the customer for interruption. The Peak Period Load Factor is the average load factor of the customer during NEP's peak months.

21 (Popup)

[4]In its Order No. 18,982 in this docket the commission approved CIS-3 as a temporary interruptible rate program to be offered through special contracts.

22 (Popup)

[1]PSNH's Memorandum on Treatment of Unpaid ECRM expenses filed on June 24, 1988 indicates that PSNH relies upon § 525(a) of the U.S. Bankruptcy Code for this argument, 11 U.S.C. § 525(a).

23 (Popup)

[2]N.H. Admin. Rules Puc 307.04 provides that: "All accounting records required by said commission shall follow the uniform classification of accounts of the Federal Energy Regulatory Commission." The FERC rules generally require accrual accounting. 18 CFR Part 101 (General Instructions, Number 11) (1987); I FERC Statutes and Regulations ¶ 15,022.

24 (Popup)

[3]The consumer advocate provided two attachments to its briefs of correspondence that it presumably desires the commission to rely upon. The commission believes it is appropriate to expect such material to be presented at the hearing, not as an attachment to a brief. Thus, the commission shall disregard this material.

25 (Popup)

[4]N.H. Admin. Rules Puc 303.04(b)(2), 403.04(b)(2), 503.02(b)(2) and 603.04(b)(2).

These rules governing interest on commission deposits were amended to their current form in commission order no. 18,887 (October 28, 1987) (72 NH PUC 516).

26 (Popup)

[1]*Re D.J. Pitman International Corp.*, DR 85-139, Report and Order No. 18,667 (May 11, 1987) (72 NH PUC 166) and No. 18,719 (June 19, 1987) (72 NH PUC 232) *(Pitman)* and *Re HDI-Hinsdale Inc. — Upper Robertson Dam*, DR 84-347, Report and Order No. 18,668 (May 11, 1987) (72 NH PUC 169) and No. 18,718 (June 19, 1987) (72 NH PUC 230) *(HDI-Hinsdale)*, (these decisions are discussed infra p. 296).

27 (Popup)

[1]Report Regarding Temporary Rates and Procedural Schedule and Second Supplemental Order No. 18,850 (Sept. 25, 1987)

28 (Popup)

[2]Whittaker and Sefton, *The Discounted Cash Flow Methodology: A Fair Return in Today s Market?* Pub. Util. Fort., July 9, 1987; Brennan and Moul, *Does the Constant Growth Discounted Cash Flow Model Portray Reality?* Pub. Util. Fort., Jan. 21, 1988 (hereinafter Brennan and Moul); Hill, *Use of the Discounted Cash Flow Model Has Not been Invalidated*, Pub. Util. Fort., Mar 31, 1988 (hereinafter Hill); Brennan, *Evaluation of Constant Growth DCF Model Defended*, Pub. Util. Fort., Apr. 28, 1988; David A. Kosh, Presented at the NARUC Annual Regulatory Studies Program, July-Aug. 1987 at Michigan State University, *The Determination of the Fair Rate of Return in Principle and Practice*, (1987).

29 (Popup)

[3]See footnote 2.

30 (Popup)

[4]See footnote 2.

31 (Popup)

[5]It is interesting to note that when Moul testified before this commission, he employed the DCF method and stated in part “DCF theory presumes that into perpetuity the cost rate of common equity capital, the investor's discount rate, is equal to the sum of the market-determined dividend yield and the expected growth rate of dividends.” *Re Pennichuck Water Works, Inc.*, DR 85-02, 70 NH PUC 850, 857 (1985).

32 (Popup)

[6]Ibbotson Associates, *Stocks, Bonds, Bills and Inflation* (1986).

33 (Popup)

[1]GSI has the largest number of customers of the three petitioners.

34 (Popup)

[2]The petitioners have engaged consultants to design consolidated rates that would achieve the same revenue as that realized by the three utilities under their separate rates, while minimizing the impact on individual customers and on existing customer classes. Examples of

their work product were introduced at the hearing.

35 (Popup)

[1]See for example, *Re New England Alternate Fuels, Inc. — Swanzey,* Docket DR 86-152, 71 NH PUC 423 (July 23, 1986); *Re Pinetree Power-North,* Docket DR 86-100 *et al.*, 71 NH PUC 638 (November 3, 1986); *Re TDEnergy, Inc.*, Dockets DR 84-139 and DR 85-41, 72 NH PUC 85 (March 12, 1987); *Re HDI-Hinsdale Inc. — Upper Robertson Dam,* Docket DR 84-347, 72 NH PUC 169 (May 11, 1987) and 72 NH PUC 230 (June 19, 1987); *Re D.J. Pitman International Corp.*, Docket DR 85-139, 72 NH PUC 166 (May 11, 1987) and 72 NH PUC 232 (June 19, 1987); *Re Vicon Recovery Systems, Inc.*, Docket DR 86-130, 72 NH PUC 298 (July 13, 1987) and 72 NH PUC 366 (August 20, 1987); and *Re Northeast Hydrodevelopment Corp. — McLane Dam,* Docket DR 85-186, 73 NH PUC 292 (August 15, 1988).

36 (Popup)

[*]As corrected by Supplemental Order No. 19,248, November 30, 1988.

37 (Popup)

[1]Gas Service, Manchester, and Concord will hereinafter be collectively referred to as the companies.

38 (Popup)

[1]DR 88-148, Report and Order No. 19,209 at 4 (73 NH PUC at 441).